

Date: 18 January 2013
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To: Members of the Standards Committee:
(Councillors Peter Bowden, Geoff Chamberlain, Peter Halse,
Frances Newth and Tim Wood)

Substitute members for information:
Councillors Alan Dent and Douglas Hull

Co-opted non-voting members (Parish/Town Councillors):
Councillors David Mason and Courtney Richards

Co-opted non-voting member (Independent)
Ray Davison and Tim Swarbrick

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Chief Executive
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Appointed Independent Person (non-voting) - Alison Willan
Appointed Reserve Independent Person (non-voting) – John Walpole

Standards Committee
Tuesday 29 January 2013
10 am
Council Chamber

Members of the Council who do not sit on this Committee are welcome to attend as observers.

Members of the public are welcome to attend this meeting.

- A period of 15 minutes has been provided at the beginning of the meeting to allow members of the public to raise questions.
- In addition, the public may speak on items listed on the agenda. After a report has been introduced, the Chairman of the Committee will ask if any member of the public would like to speak in respect of the matter and/or ask questions.
- All individual contributions will be limited to a period of 3 minutes – where there is an interest group of objectors or supporters, a spokesperson should be appointed to speak on behalf of the group.
- The public is advised that the Chairman has the right and discretion to control questions to avoid disruption, repetition and to make best use of the meeting time.

Should anyone have any special needs or require any reasonable adjustments to assist them in making individual contributions, please contact Hannah Whitfield (contact details at top of page).

Councillors and members of the public are reminded to switch off mobile phones during the meeting. If this is not practical due to particular circumstances, please advise the Chairman in advance of the meeting.

Chief Executive: Mark Williams
Richard Cohen – Deputy Chief Executive
Denise Lyon – Deputy Chief Executive and Monitoring Officer

AGENDA

		Page/s
1	Public question time – standard agenda item (15 minutes) Members of the public are invited to put questions to the Committee through the Chairman.	
2	To receive any apologies for absence.	
3	To confirm the minutes of the Special Standards Committee meeting held on 16 October 2012.	4 - 6
4	To receive any declarations of interests relating to items on the agenda.	
5	To agree any items to be dealt with after the public (including the press) have been excluded. There are no items which Officers recommend should be dealt with in this way.	
6	To consider any items which in the opinion of the Chairman, should be dealt with as matters of urgency because of special circumstances. (Note: Such circumstances need to be identified in the minutes. If you wish to raise a matter under this item, please do so in advance of the meeting by notifying the Chief Executive who will then consult with the Chairman).	
7	Communications and Media (including Social Media) Draft Social Media Policy – for debate before adoption by Council.	Communications and Public Affairs Manager 7 - 17
8	Role of the Independent Person and protocol	Monitoring Officer 18 - 28
9	Complaints update and statistics	Monitoring Officer 29 - 30
10	Dispensations	Monitoring Officer 31
11	Forward Plan	Monitoring Officer 32

Members and co-opted members remember!

- You must declare the nature of any disclosable pecuniary interests. [Under the Localism Act 2011, this means the interests of 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 as if you are civil partners]. You must also disclose any personal interest.
- You must disclose your interest in an item whenever it becomes apparent that you have an interest in the business being considered.
Make sure you say what your interest is as this has to be included in the minutes. [For example, 'I have a disclosable pecuniary interest because this planning application is made by my husband's employer'.]
- If your interest is a disclosable pecuniary interest you cannot participate in the discussion, cannot vote and must leave the room unless you have obtained a dispensation from the Council's Monitoring Officer or Standards Committee.

EAST DEVON DISTRICT COUNCIL

Minutes of a Meeting of the Standards Committee held at Knowle, Sidmouth on 16 October 2012

Present: Councillors:
Peter Halse (Chairman)
Peter Bowden
Douglas Hull
Frances Newth
Tim Wood

Co-opted non-voting members:
Cllr David Mason, Parish/Town Council member
Cllr Courtney Richards, Parish/Town Council member
Ray Davison, Independent member

Also present: Councillor Alan Dent
Alison Willan, Independent Person
John Walpole, Reserve Independent Person

Officers: Denise Lyon, Monitoring Officer
Rachel Pocock, Corporate Legal and Democratic
Services Manager
Hannah Whitfield, Democratic Services Officer

Apologies: Councillor Geoff Chamberlain
Tim Swarbrick, Independent member
Diana Vernon, Democratic Services Manager

The meeting started at 10.04 am and ended at 10:47 am

***11 Minutes**

The minutes of the meeting of the Special Standards Committee held on 11 July 2012 were confirmed and signed as a true record.

***12 Openness and transparency on personal interests – A guide for councillors**

The Department for Communities and Local Government had published a practical guide for councillors on openness and transparency on personal interests. The guide was designed to help councillors, including parish/town councillors, understand the new standards arrangements introduced by the Localism Act 2011. The guide addressed key issues raised by local councils, such as the requirement for Councillors' register of interests to be held online. The Monitoring Officer advised the Committee that although the guide was useful it was a general guidance document and did not take into account local councils' adopted Codes.

The guide had been circulated to all East Devon District Councillors and parish and town clerks.

***12 Openness and transparency on personal interests – A guide for councillors continued...**

During discussion about declaring interests at meetings, the Monitoring Officer clarified that the onus was on individual Councillors to declare their own interests at meetings. For the reasons of transparency and openness the adopted EDDC Code of Conduct required Councillors to declare any Disclosable Pecuniary Interests they had relevant to items being discussed, at a meeting, even though they had registered the interest with the Monitoring Officer by completing a Register of Interests form.

The Monitoring Officer had arranged three sessions on the new Code of Conduct for parish and town clerks and their Chairman. The two sessions that had already taken place were well attended and received positive feedback.

A Member of the Committee raised the issue of misinformation presented, and sometimes slanderous comments made, by the public at meetings and in the media, which was damaging to both Councils and individual Councillors. The Chairman commented that the public now had greater involvement in meetings, however were not required to adhere to the same protocol or a Code of Conduct as Councillors. Strong chairmanship at Committee meetings was considered to be key, however there was a need for Councillors to have a better understanding of communications and media (including social media).

RESOLVED that further discussion on communications and media (including social media) be added to the Committee's Forward Plan.

***13 Member Development – up-date and overview**

The Committee considered an update report by the Democratic Services Manager on member development opportunities offered and attended since the last Committee meeting.

The Committee noted that:

- All incoming development opportunities were assessed for value for money and appropriateness and were discussed with the Portfolio Holder – Finance;
- Councillors attending conferences were asked to complete a feedback report – this was then circulated to Councillors and specific officers to share learning;
- Councillor take up of the on-line learning (e-academy) licences had been minimal so it had been decided that these licences would not be renewed;
- Councillors were encouraged to take responsibility for their own development and a number had asked for opportunities to work directly with teams within the Council in order to learn more about particular services;
- Annual development reviews were currently underway – Councillors were invited to assess their development needs and discuss these with a member of the Democratic Services Team.

RESOLVED that the report be noted.

***14 Complaints update and statistics**

The Committee considered the report of the Monitoring Officer, which detailed the level and types of complaints received by the Monitoring Officer for the Standards Committee since the new standards arrangements were introduced on 1 July 2012. The Monitoring Officer also updated members on the outcome of complaint cases carried over from the previous complaint process.

The Committee noted that under the new system a great deal of effort was put into reaching a resolution through mediation. If an agreement between the complainant and subject member could not be achieved, or if the case warranted it, an investigation would be undertaken; it was still possible to find a resolution through mediation even if after an investigation there was a finding that the Code had been breached. The Monitoring Officer advised Members that the length of time a complaint took to resolve depended on the type of complaint and the issues raised.

Members noted that there had been 8 issues raised by complainants which had been discussed by the Monitoring Officer and Independent Person, however were not found to be Code of Conduct complaints.

The Independent Member commented that the Monitoring Officer worked extremely hard to find a way to resolve a complaint that was satisfactory to both the complainant and subject member. The new arrangements had the potential to raise standards across Councils in East Devon.

The Chairman thanked the Monitoring Officer and Independent Person for their work to date in implementing the new standards arrangements.

RESOLVED that the report be noted.

***15 Forward Plan**

The Committee noted the contents of the Forward Plan and future meeting dates. Further discussion on communications and media (including social media) to be added to the Forward Plan for January's meeting.

Chairman Date

East Devon District Council

IT16 Social Media Policy

October 2012

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Target Audience:

Everyone

Social Media Policy

1. Introduction

- 1.1. Social media is the term commonly given to websites which allow users to interact with each other in some way, by sharing information, opinions, knowledge and interests.
- 1.2. As the name implies, social media involves the building of communities or networks, encouraging participation and engagement. Examples of Social Networking Sites include Facebook, Twitter and LinkedIn.
- 1.3. The widespread availability and use of social media brings opportunities to understand, engage and communicate with the council's audiences in new ways. It is important that these technologies and services are used effectively and flexibly, whilst balancing this with our duties to our service users and partners, our legal responsibilities and our reputation.
- 1.4. Access to Social Networking Sites is restricted from council computers to mitigate the risks that such web sites present.
- 1.5. The Council's current objectives in using social media are:
 - Assisting customers to access Council services
 - Respond to concerns about the council's policies and services and engage in debates about service provision where we consider it appropriate
 - Target hard to reach and single issue groups such as young people who are heavy web users and those who may be dissatisfied with the council
 - Update Facebook and Twitter with our press releases and other content
 - Create opportunities to engage with our customers in different ways by asking staff who are 'out there' to connect to communities through social media.

Social Media Policy

2. Purpose

2.1. The purpose of this policy is to:

- ensure that the reputation of the Council is enhanced through effective use of social media
- ensure that council employees, councillors and third parties involved in the promotion of, or who speak for, with the council are aware of, and fully comply with, all relevant legislation, policies and regulations relating to the professional and personal use of social media
- ensure that customers are able to clearly distinguish where information provided via social networking applications is legitimately representative of the council
- support and be consistent with the council's Information Security Policy with regard to the risks of using social media sites.

2.2. Staff and third parties found to be in breach of this policy may be subject to the Council's disciplinary procedures, and Councillors may be subject to action being taken under Code of Conduct or Standards procedures.

3. Scope

- 3.1. This policy applies to all employees, councillors, partners, contractual third parties and agents of the Council.
- 3.2. This policy applies to the use of social media for both Council business and personal purposes.
- 3.3. This policy must be considered by employees and councillors who are commenting on social media sites about the Council, its employees, councillors or policies, even if they are doing so in a personal capacity as private individuals.
- 3.4. In the context of this Policy, social media includes, but is not limited to, blogs, podcasts, wikis (such as Wikipedia), message boards, social bookmarking sites (Delicious), social networking sites (Facebook, My Space), blogging and microblogging (Twitter) and content sharing websites (flickr, YouTube).
- 3.5. It is the responsibility of all employees, but especially managers, to exercise appropriate controls to minimise the risk of misuse and where misuse is found to report it to ICT.
- 3.6. Breach of this policy may result in formal action. Lack of co-operation by employees or councillors in any investigation of a breach of this policy may also result in formal action.

Social Media Policy

4. Legislation, Regulations and Standards.

- 4.1. The council could be held liable for material published by its employees, councillors and third parties connected with the council, so it is vital that they are aware of and strictly comply with all relevant legislation and regulations.
- 4.2. It is recognised that social media can be used for investigatory purposes such as identifying fraud and illegal events. It is important that employees who use social media for this purpose comply with relevant guidance and legislation.

5. Officer use of Social Media on behalf of the Council

- 5.1. Approval for development or use of a social media site requires a business case.
- 5.2. The business case for social media development or use should use a formal application form and must:
 - show how it will be used to engage with target audiences
 - be authorised by the Head of Service or Corporate Manager
 - be time limited with a defined exit strategy or proved to be sustainable
 - identify the users and administrators
 - be subject to evaluation and agreement by the Corporate Communications Team, which may decline a separate online presence but grant access to the council's established corporate Facebook and Twitter pages.
- 5.3. Social media sites may only be accessed using Council IT systems by those employees listed in the business case, or subsequently approved by their Head of Service or Corporate Manager.
- 5.4. The Communications Team will maintain a register of authorised social media users. The Team will have top administration rights to all Council social media sites and be able to disable and remove other administration access as required.
- 5.5. The Terms and Conditions of use of many social media sites require that:
 - each user has a single, personal login
 - corporate shared accounts are not permitted
- 5.6. Each user of the particular social networking site may therefore need to use their personal account for Council business. However, the preference is always for a separate account and user name for Council business.
- 5.7. Advice on setting security and protection for individuals on each social media site used by the Council is available from the Communications Team.

Social Media Policy

- 5.8. Employees acting as representative of the Council making comments on a social media site not specifically branded as belonging to the Council must clearly identify their name and employment status.
- 5.9. All access to Social Networking Sites from the Council's IT systems will be monitored and logged by ICT
- 5.10. Content published on social media must be positive and respectful and employees must not:
- publish any content which may result in actions for defamation, discrimination, breaches of copyrights, data protection or other claims for damages. This includes but is not limited to material of an illegal, sexual or offensive nature that may bring the Council into disrepute.
 - Publish content for the promotion of personal financial interests, personal commercial ventures or personal campaigns
 - Publish content in an abusive or hateful manner, or in a way which contravenes the Council's acceptable behaviour policy
- 5.11. Any social media development must:
- fully identify the council and its branding and link to any corporate social media presence and provide links to the council's website www.eastdevon.gov.uk
 - comply with relevant legislation, regulations, etc. (see Appendix 1)

6. Security and Safeguarding Issues

- 6.1. While a very useful mechanism for engaging with our customers and the wider world, use of social media carries some risks. The Communications Team will advise Council users on request but the basic precautions are:
- 6.2. Never give out personal details such as home address and telephone numbers.
- 6.3. Ensure that any personal or sensitive information is handled in line with the Council's Data Protection Policy.
- 6.4. Safeguarding children and vulnerable adults... it is essential that any sites set up by the Council that target this particular customer group is monitored closely and moderated. Advice on safety can be found at Devon County Council website: www.geturvoiceheard.co.uk/docs_sn.php
- and in our own Safeguarding Policy

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Social Media Policy

- 6.5. Advice, information and resources about online safety, including how to use custom settings can be found at

www.thinkuknow.co.uk

7. Responsibilities

- 7.1. The business case owner for each area of the council's social media presence must ensure arrangements are in place to cover the event of site users leaving, being on annual leave, or being off sick.
- 7.2. The Communications Team must keep a register of who has administrative access to which Council pages.
- 7.3. The business case owner who is the main "owner" of that particular social media site must manage the access to the site according to this policy. They must have a procedure in place to ensure that administrator permissions are removed immediately for persons who have left the Council's employment.

This is to ensure the risk of pages being edited by officers no longer authorised to do so is minimised. Remember that administrators may be using their own personal logins, which the Council has no authorisation to deactivate.

- 7.4. Councillors and employees need to be aware that each user of any social media site is personally responsible for the content they publish. It should be noted that any content published is public and permanent. Deleting items may not removing them from search engines and internet caching services. Similarly customers may take screen-grabs and save them.

8. Using Social Media in a personal capacity

- 8.1. Access to social media sites for personal use using the council's IT systems is not allowed.
- 8.2. When councillors and employees use social media in a personal capacity they must:
- not share sensitive or confidential information about the Council or its employees or councillors
 - before uploading any photos or videos of colleagues check that those colleagues are in agreement
 - not bring the Council into disrepute

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Social Media Policy

- comply with the requirements of the Council's Acceptable Behaviour Policy with regard to other employees and councillors noting:

"Any unacceptable behaviour directed towards another, including harassment based on age, disability, gender re-assignment, marriage and civil partnership, pregnancy and maternity, race (colour, nationality and ethnic or national origins) religion or belief, sex and sexual orientation is unlawful and will not be tolerated in any form by EDDC. Action including dismissal may be taken using our Disciplinary Policy".

In the case of councillors, breaches may be addressed under the Code of Conduct Standards procedures.

- 8.3. **Further to the above**, when employees use social media in a personal capacity outside of work and **they make reference to their relationship to the council**, they must:

- use a disclaimer such as "The postings on this site are my own and do not necessarily represent East Devon District Council's position, strategies or opinion."
- take great care how they present themselves online as the distinction between public and private, professional and personal may be blurred
- ensure that the language they use is acceptable and respectful of others
- not make negative comments about the Council, its employees or Councillors
- at all times ensure their actions do not bring the Council into disrepute

- 8.4. When a councillor uses social media in a personal capacity and makes reference to their role as an elected member of the Council or makes reference to a Council issue they must:

- Use a disclaimer such as "*The postings on this site are my own and do not necessarily represent East Devon District Council's positions, strategies or opinions.*"
- adhere to the Code of Conduct to ensure that the language they use is acceptable and does not bring the Council into disrepute or breach any of the Council's constitutional protocols.
- be mindful, if using social media in a personal capacity during an official council meeting or event, that the use of it does not impact on the proceedings of that meeting or event, or contravene the Council's constitution or other Council protocol.

Social Media Policy

9. Breaches of this policy

- 9.1. Staff who do not adhere to this policy will be dealt with through the council disciplinary process.
- 9.2. Where an individual suspects that this policy is being violated, then they must report this immediately to their Head of Service, who, in appropriate circumstances, must liaise with the Corporate Manager (ICT) or Corporate Manager (Organisational Development).
- 9.3. For councillors, the Monitoring Officer will ensure appropriate action is taken.
- 9.4. Where external service providers, agents or contractors breach the policy, this should be addressed through contract arrangements.
- 9.5. Where the public have access to the councils IT systems, that access will be withdrawn if there is an actual or likely breach of information security, until adequate controls are in place.

10. Review and Revision

- 10.1. This policy will be reviewed annually by the Corporate Organisational Development Manager and revised according to developments in legislation, guidance, accepted good practice and operational use.

11. Authorisation

This policy has been authorised by:

Signature Date

Name:

Position :

Appendix 1

Legislation, regulations, etc.

- a. **Consumer Protection from Unfair Trading Regulation (2008)** - These regulations set out how commercial practices can be unfair through misleading or aggressive practices and lists 31 practices which are banned. Examples include ghosting (creation of fake blogs), falsely representing oneself as a customer and falsely advertising on social media sites. In addition Astroturfing – the practice of falsely creating the impression of independent public support by means of orchestrated and disguised public relations practice (in social media via blogs, postings on sites and "amateur" video) and Flogs – fake blogs by PR professionals that poses as a customer to promote goods or services are no longer permitted
- b. **Advertising Standards Authority (ASA)** – The ASA Code of Practice has certain legal powers to protect consumers from new forms of social media. All marketing communications must be legal, decent, honest and truthful and if a complaint is made evidence will be required to substantiate any claims made.
- c. **Intellectual Property (IP)** – IP includes copyright, trademarks, patents and designs. Before using any images, music, information or content, which is protected by IP, permission must be gained by the publisher. Short quotations of text usually require citation. This may also include links to websites (check the website's Terms of Use and Copyright section before making links)
- d. **Disclosure/confidentiality** – employees and councillors may have access to information, which is confidential with regards to contracts, clients, customers, staff or other councillors. Any disclosure of such information could constitute a breach of terms and conditions or of the officers or members codes of conduct.
- e. **Data protection** – employees and councillors may also have access to personal information, which is subject to the Data Protection Act 1998. This relates to data from which a living individual can be identified and includes photos and videos. Before any such data can be used in a social media context full written permission must have been obtained.
- f. **Defamation** – this is the act of making a statement about a person or company that is considered to harm reputation. If it is written down (in print or online) it is libel and if spoken known as slander. Companies can be held responsible for something an employee or councillor has said if it is on behalf of the company or in company sanctioned space. Action can also be taken for repeating libellous information from other sources and for content generated by users on company space.
- g. **Invasion of privacy** – This is a complex area covered by several laws, however the Human Rights Act incorporates the right of privacy for individuals and companies. Practical areas where this could be of concern are disclosing information about colleagues on a personal blog or personal social network site and collecting information about visitors to your sites and using it inappropriately.

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Social Media Policy

- h. **Professional standards** – Those PR and marketing professionals employed by the council as employees or as contractors should be mindful that both the Chartered Institute of Public Relations and Chartered Institute of Marketing have professional codes of conduct, which relate to social media and that breaches of these codes could lead to removal of accreditation or membership status. Other Institute's may have similar rules.

THE ROLE OF THE INDEPENDENT PERSON – CONCLUSIONS FROM WORKSHOPS

Background

Hoey Ainscough Associates held a series of seven regional workshops on the role of the Independent Person (IP), supported by **Wilkin Chapman Goolden Solicitors**.

These notes are a summary of the main discussion points, together with a series of recommendations from Hoey Ainscough Associates Ltd, endorsed by Jonathan Goolden of Wilkin Chapman Goolden, about how the role may be made to work effectively.

Events were held at seven venues – Basingstoke, Lincoln, Burnley, Warwick, Norwich (Broadlands DC), London (LB Camden) and Sidmouth (East Devon DC).

148 delegates attended, representing 86 authorities. Of these delegates, 115 were IPs and 33 were officers. Of the IPs who attended, there was a general split of around 50/50 between those who were new and those who had been independent standards committee members under the old framework.

General observations

While some authorities had given considerable thought to the new arrangements and some had already been handling cases successfully, most authorities were still developing their processes and a significant minority of IPs had had either no or minimal contact with the authority since appointment and/or were unaware of their council process and had no role description in place beyond the initial advert or appointment letter.

IP Role in cases

Filtering initial allegations

In most councils the decision whether or not an allegation should progress had been delegated to the monitoring officer, though a few councils had retained an 'assessment committee' to which the MO made recommendations.

In both models, the IP was generally involved in giving views on the initial allegation. However, in some cases, it was at the discretion of the MO as to whether the IP was consulted. In those cases, there seemed unclear criteria as to when this discretion was exercised.

We recommend that, where the MO is operating discretion, there needs to be transparency about the circumstances under which such discretion is exercised to protect the MO and IP and avoid accusations of inequitable treatment.

Where decision letters were sent out, they generally said something along the lines of 'the views of the IP have been considered in reaching this decision'. We were not given an example of where an IP's views had differed from the decision.

In a minority of cases, the IP was a co-signatory of the letter alongside either the MO or committee chair.

In a minority of cases it was not made explicit that the IP had been consulted.

We recommend that, where the IP's views have been sought, this is stated explicitly (and any different view recorded), but they do not sign the letter as that risks at best blurring the decision-maker's accountability and at worst invalidating the decision as the IP is not a decision-maker.

Role post-filtering

Very few IPs saw themselves as having a role in cases which were being dealt with other than through investigation (such as by informal resolution or mediation) though a few were involved and some felt they had specific skills they could use to help the MO in this process.

Multiple roles or one per case?

There was considerable discussion as to whether, where there was more than one IP in an authority, there should be involvement of more than one in each case. There were two angles to this:

- a) Whether the law actually obliged an authority to seek the views of all IPs or, if not, if they should anyway work as a team on each case; and
- b) Whether a different IP should be given a different role for each case – for example, one to support the MO on the filtering, one to support the subject member and one to support the standards committee.

There was general agreement that the 'multiple role' approach was more fraught as it risked IPs 'being played off each other', becoming associated with a particular side or being seen not to be independent.

With regard to the legal requirement, it is clear that the law allows for appointment of more than 1 IP but we think it is reasonable to interpret the law as allowing council discretion as to which IPs it consults in any one case, provided it has made reasonable arrangements. The legislation tends to talk in the singular about an independent person whose views must be sought.

Where there is more than 1 IP such arrangements could be:

- a) To have a designated 'lead IP' who deals with all cases, with other IPs (reserves) only becoming involved where the lead IP is unavailable or has a conflict of interest;
- b) To have more than 1 IP, all of whose views are sought on each case. This can become difficult if there is more than 2 or 3 IPs as there may be confusion over differing views and the council or monitoring officer may risk being accused of 'cherrypicking' views;

- c) To select which IPs to use on a case-by-case basis. If the criteria for selecting a particular IP are not clear this can also run the risk of accusations of 'cherry picking'. For this to work, it needs to be set out clearly how an IP is selected (e.g. on the 'cab-rank principle' or because of particular specialisms, such as an IP who is a parish council expert, or is designated to be involved in cases of bullying etc).

We recommend that there should only be one IP per case for clarity and efficiency. However, where a different process is used locally there needs to be very detailed guidance about how the different IPs operate within that framework.

Giving views

There was limited experience of IPs having given views on a case. However, it was generally agreed that there needed to be an agreed process for how this was done, how an IP was to be contacted and that the views should be expressed in writing, at least as a follow-up to any meeting. This would protect the IP against misrepresentation and would allow there to be a transparent record in place.

Giving views to the Council

There were various stages in the process at which an IP might be approached to give views to the council (in practice, this meant to the monitoring officer or standards committee dealing with a particular case). There did need to be a formal mechanism whereby views were sought and given. These views would be subject to FOI and DPA requirements.

It was important that there was a clear distinction between the IP and the decision-maker. The IP should not therefore risk being seen as putting themselves in the place of an investigator or adjudicator by becoming too heavily involved in a case.

There was a general consensus that views would cover broadly two different aspects - as a sounding board for the investigator and/or adjudicator along the lines of 'do you agree or not that these facts constitute a breach' and as a quality assurance that the process had been fair, transparent and proportionate.

Giving views to the subject member

Little thought had been given in many cases as to how the subject member would seek the views of the IP and what views the IP should be giving (or declining to give).

There should be an agreed mechanism for the subject member contacting the IP – for example, through an appointment made by the monitoring officer or democratic services officer – and it should be avoided allowing the subject member free access to the IP by, for example, having their telephone numbers readily available.

This would allow the IP time to prepare for any discussion rather than being cornered into giving 'off the cuff' opinions and avoid the IP being seen as the advocate for the subject member.

Thought needs to be given as to whether any views expressed by the IP are made available to other parties to aid transparency and protect independence.

When dealing with a subject member, an IP's views could be sought but did not need to be given. The IP's role may most usefully be to listen to any concerns being expressed by the member and then reflect on whether these concerns are valid and if so are they being addressed in the process

We recommend that IPs should only have contact with the subject member where it has been arranged in advance, and that any views expressed should be made available in writing to all relevant parties in the process.

Giving views to the complainant

The legislation gives no specific right to a complainant to seek the views of an IP. Nevertheless, there may be times when the IP could usefully have contact with the complainant, in a similar managed way to the way that they deal with the subject member. This can be particularly valuable where the complainant is the 'wronged party' or complaining on behalf of somebody else rather than simply a disinterested reporter of a perceived misdemeanour.

Again, the IP's role may be most usefully to listen to the complainant but should avoid being drawn into becoming an advocate.

If doubt is raised about whether a complainant is entitled to seek views, the council can always ask the IP to give its views to the council based on a discussion with the complainant.

We recommend that your process should allow some access to the IP for the complainant, but that the scope of that contact is properly defined.

Maintaining independence and ensuring fairness

We talked with IPs about what they would do if they felt the process was unfair, that their concerns weren't being listened to or they saw cases being dealt with in a partisan way. We also discussed strategy for handling media enquiries should the press want to know the IP views, particularly in high-profile or contentious cases, and how the IP could ensure they were perceived to be independent, rather than becoming (or being perceived as becoming) too close to a standards committee, monitoring officer or one side in a case.

Few IPs or officers had thought these issues through, but it was agreed that there needed to be a clear process to allow an IP to escalate concerns through a

council. This could be through the right to raise concerns with the chief executive, with group leaders or at full council.

The general view was that media contact would be dealt with by the authority rather than the IP commenting on cases, and that use of the media to raise concerns in the absence of a national regulator was a last-resort 'nuclear option' only where genuine concerns about the way the process was being run were being persistently ignored by senior politicians and officers.

IPs needed therefore to understand how their council was run and worked but needed to avoid becoming too close to individuals if they wanted to maintain their independence. They also needed to understand some of the history of the council (and where appropriate its parishes) if there had been particular governance issues in the past to help them understand the context of their role.

They had to be particularly careful to avoid becoming too closely linked with the monitoring officer, as they needed to be able to give independent dispassionate views.

We recommend that councils have clear procedures set out which enable an IP to raise concerns within the authority about the way a case, or the framework as a whole, is being handled if their views are being consistently ignored.

Promoting and Maintaining high standards

Few IPs felt they had any role in helping the council more widely in promoting and maintaining high standards, rather than simply supporting them on cases, though there were one or two who had explicitly been given such a wider role. Some had been involved in drafting the Code or case handling procedures and would expect to be consulted on revisions. Only a few had more explicit wider roles written into their terms of reference.

Few IPs had had any discussion about a wider role supporting the authority and the consensus was that this was a matter either for the monitoring officer or standards committee, though clearly they would raise issues if they thought they could see wider lessons emerging from cases they were involved with.

There was also a lack of clarity in many cases about the relationship between the IP and the standards committee. A minority of IPs had been seconded on to the standards committee and most (but not all) would expect to attend as observers. However, in some cases no specific discussion had taken place about how the roles supported each other.

We recommend that, where there is a standards committee, the independent person should not be a co-opted member as this can blur the roles and risks compromising independence when they are asked to give views. However, IPs should be sent papers in advance, have the right to ask for items to be placed on the agenda and the right to address meetings if they so wish.

Other issues

We discussed some more general issues about the role. This included the need to consider how the IP was granted access to confidential documents which might be relevant to a case and access to council buildings and contact with officers; their role and visibility to the parishes; whether the IP should be on the council website; what their legal status was and whether they were covered by indemnities and insurance; and how they would deal with any conflicts of interest.

It was agreed that there needed to be detailed formal protocols between the IP in the authority about both what their role was and how they were to discharge it. This would ensure clarity for all concerned, help define the role and its limits and relationships and would mean that an IP would be covered by the council indemnity, provided they acted with good faith within their agreed role.

IPs should also be asked to sign up to a code of conduct and, as a minimum, register and declare interests so that any conflict they might have within a case can be identified at an early stage.

Conclusions

The role of the IP remains somewhat under-defined in most councils. This is not surprising given the newness of the role, but it is clear that it is rightly seen as very different from the role of the independent standards committee chair.

There are a number of different approaches to the role as you would expect and there can be no one template for how the job should be done as it will depend on local circumstances and skill sets.

Nevertheless, there is a desire for shared practice and ways in which IPs can share experience across authorities. It was felt that councils should be reviewing their procedures in the light of experience some time next year. This could be combined with repeat sessions to see what lessons had been learnt in six to nine months' time.

In addition to the recommendations on good practice in these notes we concluded five more general points:

- 1. Ensure there is a written contract and description of the role.**

Many IPs are unclear of what it is they are supposed to do or not supposed to do, as they only have limited job descriptions. The role can be very narrow – sticking to the bare statutory minimum – or go much wider to look at standards issues generally, but whatever the intention, this should be clear and in writing for all concerned.

Similarly there is a need to have an understanding about what access they have to confidential council papers, IT equipment and officer support and also how they should be contacted and how they can contact the authority.

2. Giving of views should be part of a formal process

The key role is to give views. These views are not binding but will carry weight. IPS will want to ensure their views are not misrepresented or ignored unreasonably.

They should therefore always put their views in writing, even if it is a follow-up note later. They should avoid being drawn into 'off the record' discussions and will therefore need to ensure that their access to members or the public involved in cases is formally controlled and properly recorded.

When giving views to one party, they should always make clear those views will be formal, in writing and shared with the authority and, if appropriate, other parties in the case.

There should therefore be an agreed format for recording views and all parties should be clear about the role at the start of a case.

3. There should not be a separation of roles within a case

Some authorities have adopted an approach of having a division of roles for IPs within an individual case – for example, one to support the MO in reaching decisions, one to give views to the council, one who is the contact point for the subject member, and one who may be a contact point for the complainant.

We do not think this is good practice as it risks the IP losing the perception of independence and impartiality and also risks IPs being played off one another or views not being presented in a transparent manner.

We believe that there should only be one IP designated for each case (or if more than one that they work as a team) to ensure a consistent, independent approach.

4. Understand your council(s) and your relationship with them

Each council has a unique culture and way of working. It is important IPs understand some of that context, for example by attending some meetings as an observer (including at parish level if appropriate).

IPs should understand some of the history and previous standards issues at their authority and parishes as background to the role.

They should be known to the senior managerial and political leadership, not least so that they know how to raise concerns if they see matters being dealt with inappropriately.

But...

5. Don't lose your independence

Independence is their key attribute. They must therefore avoid being seen as 'part of the authority' and they should not become too close to individuals. They are there to ensure the fairness of the processes for all concerned, and to act as a guarantor to both the council and the public that standards matters are being dealt with effectively, efficiently and proportionately. This has to be seen to be an independent role.

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DRAFT PROTOCOL RELATING TO THE INDEPENDENT PERSON

This protocol is to make clear the relationships between the Independent Person (IP) and the various parts of the local authority involved in the process of handling standards complaints and wider promotion of standards. Its aim is to ensure that responsibility is clear at each stage of the process and set out the expectations and rights of the IP.

It is written with the following assumptions:

1. There is a 'lead' Independent Person (with a reserve). If you have more than one IP, you will need to adopt the Protocol accordingly.
2. The Monitoring Officer is taking the decisions whether or not any further action should be taken on an initial complaint. If matters are being referred to an assessment committee for that initial filter, you will need to adopt the Protocol accordingly.
3. The IP is consulted on allegations by the MO before a decision is reached
4. The local procedure allows complainants to have access to the IP. If this is not the case, the Protocol will again need to be adapted accordingly.
5. Matters under investigation are referred to a standards committee for determination. You will need to adjust it if this is not the case.
6. It is written from the perspective of a council with parishes.

Considering written allegations

1. The Monitoring Officer (MO) will seek the views of the Independent Person (IP) before reaching a decision on whether any further action should be taken on a written complaint
2. When issuing the decision letter, the MO will record that the IP has been consulted and that their views have been taken into account. Where the view of the MO and IP differ, the MO will record the reasons for following a particular course. The letter will make clear that it is the MO and not the IP who is the decision-maker.

Matters under investigation

3. A member of the principal authority or a town or parish council who is the subject of a complaint may seek the views of the IP. A member wishing to contact the IP should do so via the MO who will arrange for a meeting to take

place. These arrangements will be communicated to the subject member by the MO in the decision notice.

4. Where the IP has given views to the subject member, those views shall be put in writing and made available to all relevant parties in the case.
5. The IP will need to agree in advance with the subject member rules of confidentiality but it will be up to the IP to decide whether matters should remain confidential and, even where there is confidential information disclosed to the IP, there should be a public statement that confidential matters were discussed.
6. The complainant may also seek the views of the IP. As with the subject member, contact should be arranged through the MO and any views expressed should be made public.
7. The MO may consult the IP at any stage during the process, particularly on matters which relate to the procedures for handling complaints.
8. Where a matter has been referred to a standards committee for determination, the committee must seek the views of the IP before reaching its conclusions. The IP's views should be recorded in any decision notice and, where those views do not reflect the final outcome reasons must be given for any differences. However, it must be clear that it is the standards committee and not the IP who is the decision-maker.
9. The IP shall not make any comments to the media on any matter without prior agreement of the MO or council communications team. Any requests for comments from media shall be referred in the first instance to the MO who may refer these to the Chair of the Standards Committee as appropriate.
10. The IP may be requested by the MO or standards committee to assist in mediation or conciliation in order to resolve complaints where that is considered the most appropriate course of action.
11. The IP may be requested by the MO or standards committee to assist in any training on conduct issues as appropriate.
12. Where the IP is unable to act because of a conflict of interest or because they are otherwise unavailable their role will be carried out by the reserve IP.

Relationship with the standards committee

13. The IP and reserve shall receive agendas and minutes of all meetings of the Standards Committee and shall be entitled to request for items to be added to the agenda with the agreement of the chair and to speak at the committee.
14. The IP and reserve are not members of the standards committee and therefore are not part of the formal business of the meeting and cannot vote on any matters put to the meeting. They may be invited to observe confidential matters with the agreement of the chair.

Other matters

15. The IP has the right to raise any concerns about standards issues or implementation of the process with the authority's chief executive and has the right to address a meeting of the full council about any concerns.
16. The council, through its standards committee and MO, is responsible for ensuring that the council meets its duty to promote and maintain high standards. However, the IP has the right to be consulted on any proposed changes to the Code of Conduct or procedures for handling allegations.
17. The IP has the right of access to any confidential information required to carry out their role. Access to such information and its storage shall be agreed with the MO.
18. The IP has the right of access to council buildings in order to carry out their role. Access should be agreed in advance with the MO.
19. The MO will meet at least quarterly with the IP and reserve to review relevant matters.
20. The IP and reserve will agree to sign a code of conduct, including a register of interests to be held by the MO and will declare any relevant interests in relation to cases to the MO who will decide whether the interest conflicts them out of involvement in the matter.
21. The IP is to be considered an office-holder of the authority in accordance with the duty under s28(7) of the Localism Act 2011 and is therefore entitled to be covered by the council's indemnity insurance provided they act reasonably and within the terms of this Protocol.

PRODUCED BY HOEY AINCOUGH ASSOCIATES LTD
5 December 2012

Standards Committee, 29 January 2013

Item 9 - Code of Conduct complaints update

Outstanding complaints update and new cases received since the last Standards Committee meeting (16 October 2012) to date:

Case #	TC/PC or EDDC member	Relevant paragraphs in Code of Conduct and outcome following consultation with Independent Person
Outstanding complaints:		
MO-C003	EDDC Councillor	Investigation found breach of Code - Para 4a - treat others with respect and courtesy. Awaiting a possible resolution before decision on calling a sub-committee for a Hearing.
MO-C006	EDDC Councillor	Para 4a - treat others with respect and courtesy. Concluded. Amicable agreement reached.
New complaints:		
MO-C004	EDDC Councillor	Para 7.2 – declaration of personal interests on register of interest form/in meetings. Concluded. Resolution found.
MO-C005	EDDC Councillor	8.2 – declaration of interests at meetings Nearing conclusion.
MO-C007	EDDC Councillor	5a – you must not use or attempt to use your position as a member improperly to confer on or secure for yourself or any other person an advantage or disadvantage and 5h – must not bring your office or council into disrepute Nearing conclusion.
MO-C008	EDDC Councillor	4a – you must treat others with respect, 4c – before making any allegation to the Monitoring Officer about the conduct of another member of this authority or a member of one of the parish councils within East Devon you shall first consult with the Council's Monitoring Officer, 5a – you must not attempt to use your position as a Member improperly to confer on or secure for yourself or any person, an advantage or disadvantage, 5h – you must not 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 into disrepute. Resolution being sought.
MO-C009	Town Councillor	5a - you must not use or attempt to use your position as a member improperly to confer on or secure for yourself or any other person an advantage or disadvantage. Assessment stage

MO-C010	EDDC Councillor	5a - you must not use or attempt to use your position as a member improperly to confer on or secure for yourself or any other person an advantage or disadvantage. Assessment stage
MO-C011	Town Councillor	5a - you must not use or attempt to use your position as a member improperly to confer on or secure for yourself or any other person an advantage or disadvantage, 5h – you must not 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 into disrepute. Assessment stage

Since the last Standards Committee meeting there have been 2 issues raised by complainants which have been discussed by the Monitoring Officer and Independent Person that were not found to be Code of Conduct complaints.



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Dispensation for Members and Co-Opted Members of East Devon District Council 2012/2013

In accordance with powers delegated to the Monitoring Officer I confirm that, for the period 1 December 2012 to 30 April 2015, all Members and Co-opted Members of the Council shall not be regarded as having a disclosable pecuniary interest as defined in the Council's Code of Conduct and have been granted a dispensation to permit them to speak and vote at meetings of the District Council, its Cabinet or any Committee, Sub-Committee, Joint Committee or Working Party if the matter relates to:

- the setting of the Council Tax or Precept

.....
Signature
(Proper Officer of East Devon District Council)

Dated 28 November 2012

(Note: The Council's Monitoring Officer is authorised to grant dispensations to Members where:

a) without the dispensation the number of people prohibited from participating would be so great a proportion of the body transacting the business as to impede the transaction of the business, or

b) without the dispensation the representation of different political groups would be so upset as to alter the likely outcome of the vote).

Agenda Item 11

Standards Committee

29 January 2013



Standards Committee

Forward Plan 2012/13

9 April 2013

Complaints update
Forward Plan

These are the main items, but there may be other matters arising through the year that members want to include too.