
FREETHS

**REPORT OF AN INVESTIGATION UNDER
THE CODE OF CONDUCT
INTO ALLEGATIONS CONCERNING
COUNCILLOR PATRICK OF ELM PARISH COUNCIL**

by

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(Commissioned by Fenland District Council)**

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1. Executive Summary

Fenland District Council (“FDC”) received a complaint from Mr David Gutteridge on 8 June 2015 concerning the conduct of Cllr Patrick.

These complaints were considered by the Conduct Committee of FDC on 16 July 2015 who determined that the allegations should be referred further for investigation. The complaint was referred to me with a request to investigate initially on 23 July 2015.

I, Stephen Pearson have obtained both oral evidence and copies of documents from Cllr Patrick and Mr Gutteridge.

The basis of the complaint is that Cllr Patrick failed to comply with the relevant provisions of the current FDC Code of Conduct, which, I am advised, is also the relevant adopted code for the Elm Parish Council. The wording of the key relevant provisions include:

- Paragraph 2(1) – “*You must comply with this Code whenever you act, claim to act or give the impression you are acting in your official capacity as a member of the Authority*”
- Paragraph 3(1) - “*You must treat others with respect*”.
- Paragraph 3(2)(a) – “*You must not do anything which may cause the Authority to breach UK Equalities Legislation*”.
- Paragraph 3(2)(b) - “*(You must not) bully any person*”.
- Paragraph 5 – *(You must not) “conduct yourself in a manner which could reasonably be regarded as bringing your office or Authority into disrepute*.

2. Cllr Patrick's details

Cllr Patrick is a co-opted member of Elm Parish Council. He was previously a member of Fenland District Council.

3. The Relevant Legislation and Protocols (in force at the time the incidents complained of)

I understand that the Parish is subject to the Fenland District Council Code of Conduct, which provides:

- Paragraph 2(1) – “*You must comply with this Code whenever you act, claim to act or give the impression you are acting in your official capacity as a member of the Authority*”
- Paragraph 3(1) - “*You must treat others with respect*”.
- Paragraph 3(2)(a) – “*You must not do anything which may cause the Authority to breach UK Equalities Legislation*”.
- Paragraph 3(2)(b) - “*You must not bully any person*”.
- Paragraph 5 – “*You must not conduct yourself in a manner which could reasonably be regarded as bringing your office or Authority into disrepute*”.

4. Chronology

- 7 May 2015 – Election – Cllr Patrick is unsuccessful in being elected as a member of FDC as a UKIP Candidate.
- 19 May 2015 – Cllr Patrick co-opted to Elm Parish Council.
- 7 June 2015 – Mr Gutteridge makes comment to Cllr Patrick via Facebook Messenger.
- 8 June 2015 – Cllr Patrick responds.
- 8 June 2015 – complaint to FDC.

5. Disputed Facts

- 5.1. There appears to be some confusion around the issue over whether Cllr Patrick was aware that Mr Gutteridge was a person with a disability from his knowledge of him either personally or from on-line sources.
- 5.2. There may be an issue of dispute in terms of whether Cllr Patrick was acting in his official capacity as a member of the Authority (see paragraph 2.1 of the Code of Conduct).

6. The Evidence Gathered

I have taken statements following personal interview from Cllr Patrick and Mr Gutteridge.

I have also received certain information in terms of documents both from FDC and from the individuals involved. Cllr Patrick has passed me some materials sent to him by John Elworthy, Editor of the Cambridgeshire Times with his opinions on whether Cllr Patrick should have been aware of Mr Gutteridge's condition. This has limited relevance but is incorporated for completeness.

7. Summary of Material Conclusions

- 7.1. It needs to be stated at the outset that at the time the events occurred, Cllr Patrick despite previously having been a District Cllr was only a Parish Cllr for Elm, a village some 3 miles from Wisbech itself.
- 7.2. In addition to the above, I need to take into account the fact that the world of social media and the immediacy of it leads to people making comments that they might not do in more traditional forms of correspondence or in conversation.
- 7.3. It is clear that Mr Gutteridge is particularly upset by the comments made because he felt that they were an attack on him personally and that the reference made to “*people like you*” was taken to be a reference to persons with autism or conditions within the autistic spectrum. It is, however, by no means clear whether Cllr Patrick was aware of Mr Gutteridge’s condition.
- 7.4. I find it quite clear from Mr Gutteridge’s “*profile page*” that he has an interest in raising awareness of issues related to autism and associated conditions.
- 7.5. Cllr Patrick felt provoked by Mr Gutteridge’s comments. He has personal sensitivities of his own, which are understandable.
- 7.6. What is helpful in this case is that the exact content of the words stated are reproduced by a screen print showing the Facebook message entries. By any normal standard, Cllr Patrick’s comments are rude and offensive.
- 7.7. Cllr Patrick has provided certain information from Mr John Elworthy, Editor of the Cambridgeshire Times who it appears has an interest in this dispute. Mr Gutteridge would seem to argue that Mr Elworthy’s involvement is not relevant and although the paper provided by Mr Elworthy is included at section 9 of this report, I do not think it has a particularly strong influence one way or the other.
- 7.8. Mr Gutteridge has stated that he would not be satisfied (if the allegations were to be proven) with an apology by Cllr Patrick for his behaviour.

8. Scope of Investigation

As well as expressing a view on whether Cllr Patrick has breached specific provisions of the Code, I have been asked to deal with 4 specific points raised by the decision of the Conduct Committee on 16 July 2015 and set out my answers below. My deliberations more generally are set out in further detail within this report:

- *In what capacity had Cllr Patrick made the comments?*

Cllr Patrick made the comments as a politician and councillor. Notwithstanding the fact that he was no longer a member of Fenland District Council at the time of the exchange took place, he was still a Councillor, albeit on Elm Parish Council.

- *Did he call himself Councillor or refer to Council matters?*

He did not call himself a Councillor within the correspondence concerned and his Facebook user profile does not refer to him as such but reference was made within the exchange to Council matters and the election process.

- *There was a need to go back on the Facebook thread to see the preceding comments to give a context as to what role he was acting in as this would determine if he was breaching the Code of Conduct*

There were no specific preceding comments within this thread of correspondence other than the comments made by Mr Gutteridge including “*you are really a nobody, good Garry beat you, they deserved better than you*”.

- *What evidence was there that the complainant on a regular basis made it clear on social media as to what his medical condition was and can we presume that Cllr Patrick knew this?*

As detailed below, there is evidence on Mr Gutteridge’s Facebook profile, such as links to opinion pieces on autism and use of the “*autism awareness*” logo that would allow, with a modicum of inspection, a person to understand that there were relevant issues connected to autism which might create the impression that Mr Gutteridge had more than a passing interest in the subject. Mr Gutteridge also states that Cllr Patrick would have known of Mr Gutteridge’s condition by virtue of his involvement of local affairs,

but this is not proven. It is also stated that the fact should be apparent on social media where Mr Gutteridge and Cllr Patrick shared threads. I have not been given access to these additional exchanges, Cllr Patrick indicated they had been deleted.

9. Reasoning as to whether there have been failures to comply with the Code of Conduct and Findings

Preliminary

9.1. According to paragraph 2.1 the general obligations of the Code only apply when a person acts, claims to act or gives the impression that a Councillor is acting in his official capacity as a member of the Authority or is acting as a representative of the Authority. The intent of this is to avoid the Code applying in a situation in something which can be fairly regarded as entirely part of an individual's personal life.

In my opinion, the incident concerned related to Cllr Patrick's political life and his role, past and present, as a Councillor. From speaking to Mr Gutteridge, his upset at the comment made was based, in particular on the fact that, as a Councillor, Cllr Patrick should have behaved appropriately in dealing with a member of the public such as himself. Accordingly, I do find that Cllr Patrick was within the scope of the Code when the incident complained of occurred.

9.2. Paragraph 3.1 – (you must treat others with respect) –

9.2.1. it is clear that there is no love lost between Cllr Patrick and Mr Gutteridge. They have had previous on-line disagreements through the Wisbech Discussion Forums and even after the events complained of were apparently involved in an on-line argument concerning whether or not it would be appropriate for someone with disabilities and an assistance dog being allowed into a local restaurant. However, this particular exchange of messages does not appear to be part of a particular “*thread*” as such;

9.2.2. it can be understood that Cllr Patrick might take exception as someone who has been quite prominent in local affairs to be described as a “*nobody*”. However, to refer to “*people like you*”, to describe Mr Gutteridge as a “*cretinous person*” and to state to him that “*people like you have absolutely nothing of value to offer society*” would, by any standards, be regarded as rude and disrespectful. The fact that it is stated to somebody who has a disability means that the comment might be taken

with more offence by the recipient than might otherwise be the case and the historic approach of the (old) Standards Board for England was that you “*take a victim as you find him*”;

- 9.2.3. the statements made, even though they were in response to a negative comment has to be regarded as something which is a failure to “*treat others with respect*” and **I therefore have no option but to find that the allegation is proven.**
- 9.3. Paragraph 3.2(a) of the Code of Conduct – (you must not do anything which may cause the Authority to breach UK equalities legislation). There is an issue of whether Cllr Patrick committed an act of “*harassment*” by making the comments he did against someone with a disability for which the Authority could become responsible. In addition, Cllr Patrick’s actions could well have caused the Authority to breach the duty to “*eliminate discrimination, harassment, victimisation and other conduct that is prohibited*” which is part of the Public Sector Equality Duty imposed on all local authorities under S149 of the Equalities Act 2010. Whilst the relevant Authority (Elm Parish Council) might well have a defence to any such potential challenge if it could not be proven that Cllr Patrick had knowledge that Mr Gutteridge was a person with a disability, **I do find this allegation proven** on the balance of probabilities.
- 9.4. Paragraph 3.2(b) of the Code of Conduct – (you must not bully any person) – there is clearly a history of animosity including on-line arguments between these two individuals. However, Mr Gutteridge is clearly somebody who can forcefully present his position and as such **I find that he was not bullied and this allegation is not proven.**
- 9.5. Paragraph 5 – (conducting yourself in a manner which can reasonably be regarded as bringing your office or authority into disrepute). As stated above, at the time of this exchange Cllr Patrick was no longer a District Cllr nor a Town Cllr for Wisbech itself. He was a Parish Cllr for a Parish Council some distance from the town. As such, **I find it difficult to sustain an argument that his behaviour has in any way brought Elm Parish Council into disrepute and I find this allegation not proven.** My conclusion might have been different if Cllr Patrick had at the time still been a District Cllr for FDC.

10. Witness Statements and Enclosures

- 10.1. Conduct Committee Papers
- 10.2. Code of Conduct
- 10.3. Attached Statements of:
 - Cllr Patrick; and
 - Mr Gutteridge
- 10.4. Copies of correspondence with FDC
- 10.5. Facebook messenger exchange
- 10.6. Note from Mr J Elworthy dated 30.7.15
- 10.7. Guest post by Mr Gutteridge
- 10.8. D Gutteridge Facebook profile

Enclosure 10.1

Agenda Item No:	7	 Fenland CAMBRIDGESHIRE
Committee:	Conduct Committee	
Date:	16 July 2015	
Report Title:	Initial Consideration of a Member Conduct Complaint – Councillor Patrick	

Cover sheet:

1 Purpose / Summary

To consider a complaint under the Member Code of Conduct against Councillor David Patrick of Elm Parish Council.

2 Key issues

- A complaint has been raised by Mr David Gutteridge about the Conduct of Councillor Patrick.
- Councillor Patrick has been offered the opportunity to provide an initial written response to the complaint; this is attached, together with a further submission received from Mr Gutteridge whilst an informal resolution to the complaint was sought.
- The Conduct Committee is asked to consider the complaint and determine if it discloses a likely breach of the Member Code of Conduct.

3 Recommendations

Members consider the complaint and response and determine the initial consideration of the complaint.

Wards Affected	All
Forward Plan Reference	N/A
Portfolio Holder(s)	
Report Originator(s)	Carol Pilson, Corporate Director and Monitoring Officer Tom Lewis, Senior Solicitor and Deputy Monitoring Officer
Contact Officer(s)	Carol Pilson, Corporate Director and Monitoring Officer Tom Lewis, Senior Solicitor and Deputy Monitoring Officer
Background Paper(s)	None

1. Background / introduction

Mr Gutteridge submitted a complaint about the conduct of Councillor Patrick on the 8th June 2015.

Councillor Patrick has been provided with the above complaint, which included an extract from social media and offered the opportunity to respond; his response is attached. As part of the informal resolution process a further submission has been received from Mr Gutteridge confirming he wished to pursue his complaint. This is also attached for consideration by the Committee.

The complaint has been passed through the pre-screening process by the Chairman and Deputy Independent Person on the 19th June 2015. Following an extensive discussion, their decision was that a breach of the Code of Conduct may have occurred, and have therefore referred the complaint to the Conduct Committee.

2. Considerations

Members must consider the complaint against the Member Code of Conduct.

Members must consider whether or not there is a reasonable prospect of the complaint being proven based on the information held. In considering this Members are to be aware of the fact that should an investigation occur further evidence or detail can be sought.

Members are advised that where a complaint contains a number of elements they may choose to consider each element separately or take the whole complaint together.

Where Members consider that there is a reasonable prospect that a breach of the Code of Conduct has occurred they should give consideration as to whether or not there should be an investigation of the complaint.

Members should consider the following points in determining whether an investigation should occur:

- Has the Complaint already been investigated, or is it already the subject of investigation?
- Is the Complaint more appropriately dealt with through another regulatory channel?
- Is the complaint about something which 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 or simply tit for tat?

Where Members consider that an investigation is appropriate the Monitoring Officer will be asked to make suitable arrangements for such an investigation. Members are asked to give any particular comments on the scope or direction of the investigation.

If Members do not consider that there is a potential breach of the Code of Conduct or that there is no reasonable prospect of any breach being disclosed or that the complaint does not merit further investigation or that the investigation would not disclose new information then no further action is taken in respect of the complaint save for notifying the Member and the complainant, unless Members feel they are able to make an initial determination based on the information within the report.

Tom Lewis

From: Dave G <di...
Sent: 08 June 2015 18:22
To: Carol Pilson
Subject: Complaint
Attachments: Dave Patrick 08.docx; dpfb.jpg

Dear Sir

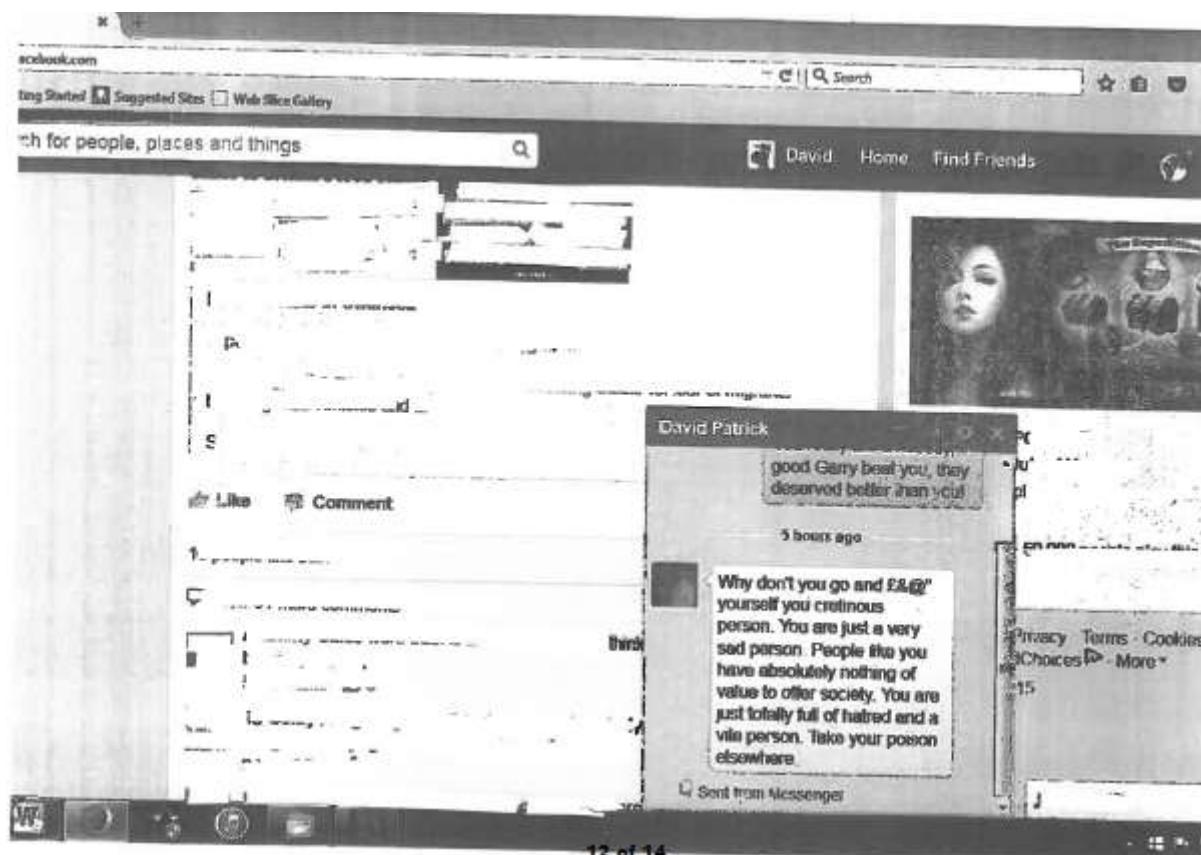
"I wish to make a complaint about Cllr David Patrick who is a Parish Councillor on Elm Parish Council. I am a vulnerable adult and I suffer from High Functioning Autism/Asperger Syndrome and depression, two facts which are publicly known on social media where I often share threads with Cllr Patrick. Recently, after a heated discussion he sent me a private message which was insulting and mean. But it was a heated discussion so I am not complaining about the insults of the meanness. But he made the comment "people like you are of no value to society" referring to my Asperger Syndrome. I do not believe that Councillors should be allowed to make comments like this about vulnerable local people. I admit that it upset me but I worry more that this intolerance and prejudice would hurt another individual more. Therefore, I wish to complain about his behaviour, which falls short of what anybody should expect from a local Councillor. I attach a screenshot of his comment to me so you can see for yourself."

I am shocked a person who represents others, in an elected office can treat anyone like this, let alone a person with disabilities and whatever steps need to be taken to stop this deplorable act need to be taken. I have attached a jpeg and a microsoft word document in the hopes one of them may be read.

I look forward to your response on this matter

Yours Faithfully

David Gutteridge
Wisbech Resident



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Tom Lewis

From: |
Sent: 11 June 2015 07:26
To: Carol Pilson
Subject: Re: Complaint

Dear Carol,

My response regarding Mr David Gutteridge is as follows.

Over a period of time Mr David Gutteridge has made several derogatory and personal comments on the Social Media namely facebook about myself. Comments that in my mind have been extremely distasteful. This came to a head when he sent a message to me personally which stated "You really are a nobody, good Garry beat you, they deserved better than you!" I still have this message on my phone. This was the straw that broke the camels back to which I responded privately and not on the Social Media to Mr Gutteridge. I then at this point blocked him in order that I did not have to endure further insults.

I find it ironic that Mr Gutteridge should now use the Conduct Committee to launch another attack. I have never had any dealings with Mr Gutteridge in the role of councillor have never met the man personally and know nothing of him say except for comments made in the social media. I was not aware of any disabilities suffered by Mr Gutteridge as I do not follow him personally on facebook.

The comments made to Mr Gutteridge were made by me as an individual and not in the capacity as a Councillor and I believe that as an individual I do have the right to comment when someone continually hurls abuse at me. Had these comments been made by me towards a constituent in my role as a Councillor then maybe just maybe there would be a case but in this instance I believe there is no case to answer.

Yours David Patrick

Sent from Windows Mail

Tora Luvia

From: Dave G <...>
Sent: 11 June 2016 12:19
To: Carol Pilson
Subject: Re: Response to your Complaint

Dear Carol

Progress this please, I didn't expect him to admit he knows about my disabilities but he does, there is simply no way he cannot as I am pretty vocal about autism, i have even written to the papers about autism, to not know i have an ASD he would have to sleepwalk through everyday life and not read media. He has seen me, 2013 county councilor elections. His remark that I am basically constantly insulting him is rubbish, I have better things to do quite frankly. We as I said had a heated discussion but when he said "Guttersnipe, crawl back under your rock" (Comment entire post deleted) I said what I did which I included in my screenshots to you. His comments in my opinion are extremely offensive and he should know better, I'm not surprised he is trying to wriggle out of this and put himself as the wounded party when the facts have been laid out! He has done what i have proved he has done and more that I may not be able to prove.

Enclosure 10.2

Rule 9 Conduct Committee Procedures⁸

1 Introduction

- 1.1 These procedures govern the working practices of the Conduct Committee when considering conduct matters of Councillors of both Fenland District Council and the Town and Parish Councils within the Fenland Area.
- 1.2 The Conduct Committee performs the functions set out in Part 1 Chapter 7 of the Localism Act 2011.
- 1.3 Members of Fenland District Council are obliged to follow the Code of Conduct detailed in Part 5 of the Council's Constitution. Each Town or Parish Council is required to adopt their own Code of Conduct and copies can be obtained either from their own websites or the Town or Parish Clerk.

2 Definitions

- 2.1 The following definitions apply to this Procedure:

Pecuniary Interests	Shall be a "Disclosable Pecuniary Interest" as defined in The Relevant Authorities (Disclosable Pecuniary Interests) Regulations 2012.
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3 Conduct Committee

- 3.1 The Conduct Committee is comprised of 5 members of Fenland District Council, all members have equal speaking and voting rights.
- 3.2 The Committee is joined by 2 members selected from Town and Parish Councils, they are co-opted on to the committee by the committee. These members are invited to speak and take part in the debate but do not have a right to vote.
- 3.3 The Committee is advised by an Independent Person or their deputy. They are appointed by the Council on an annual basis, prior to their first appointment this will be following an open advert. The Independent Person shall be appointed in line with the requirements of the Localism Act 2011.

⁸ Revised scheme approved 26th July 2012

- 3.4 The Independent Person does not sit on the committee and does not have a right to join the debate or vote. However when exercising their functions the Committee must have regard to the advice of the Independent Person.
- 3.5 The Committee is governed by the Quorum rules set out in standing order 7. However Town and Parish Members and the Independent Person do not count for the purposes of establishing Quorum.

4 Functions of the Conduct Committee

- 4.1 The Conduct Committee is primarily charged with monitoring and managing the Council's responsibilities under Chapter 7 of Part 1 of the Localism Act 2011, in respect of Member Standards.
- 4.2 The Committee Shall:
 - 4.2.1 Monitor the Code of Conduct and make recommendations to Full Council where it considers that changes are required.
 - 4.2.2 Provide guidance to Members on the Code of Conduct
 - 4.2.3 Determine Complaints made against members under the Code of Conduct save where the Independent Person, Deputy Independent Person and Chairman of Committee, advised by the Monitoring Officer, shall dismiss as a complaint as subsequently set out at 5.3.6 and 5.3.7. 9(l)
 - 4.2.4 Monitor the Register of Members Interests and report to Full Council if any changes are required as to its contents.
 - 4.2.5 Determine requests for dispensations

5 Complaints

- 5.1 Fenland District Council is the responsible authority for receiving and determining complaints against Councillor Conduct for both District Councillors, and the Town and Parish Councillors within the District,

5.2 Receipt of Complaints

- 5.2.1 All complaints about Councillor Conduct should be forwarded to the Monitoring Officer at Fenland Hall, County Road, March, Cambridgeshire, PE15 8NQ, or by email on monitoringofficer@fenland.gov.uk.
- 5.2.2 All complaints will be acknowledged in writing, where the complaint is unclear or does not relate to a serving Councillor under the jurisdiction of the Conduct Committee then the complaint will be declined by the Monitoring Officer.

¹⁰ Revised scheme approved 26th February 2015

- 5.2.3 Where the Complaint relates to a failure to act appropriately in respect of a Pecuniary Interest, this may be a criminal offence under the terms of section 34 of the Localism Act 2011.
- 5.2.4 If the Complaint relates to a failure to register an interest and the Monitoring Officer is in a position to confirm that the interest is registered they will do this. Otherwise the matter will be referred to Cambridgeshire Constabulary in the first instance as they have appropriate jurisdiction. The Complainant will be informed of the referral.
- 5.2.5 In all other cases the Monitoring Officer will contact the subject member giving them 7 days to make an initial response to the complaint. In order to establish what if any facts are agreed and whether or not the Member accepts the Complaint.

5.3 *Informal Resolution of Complaints*

- 5.3.1 Where the Member accepts the complaint the Monitoring Officer will assess whether or not an informal resolution can be achieved between the Member and the Complainant. If informal resolution can be achieved then the complaint will not proceed further.
- 5.3.2 Initial Consideration of Complaints
- 5.3.3 The Conduct Committee will having reviewed the Members initial response to the complaint or after the expiry of the 7 day period assess the complaint and determine whether or not there is a reasonable prospect of the complaint being proven based on the information held.
- 5.3.4 If it is determined that the complaint may disclose a breach of the Code of Conduct if proven additionally the following criteria will be assessed to determine whether or not the complaint merits investigation:
 - 5.3.4.1 Has the Complaint already been investigated, or is it already the subject of investigation?
 - 5.3.4.2 Is the Complaint more appropriately dealt with through another regulatory channel?
 - 5.3.4.3 Is the complaint about something which happened so long ago that there would be little benefit in taking action now?
 - 5.3.4.4 Is the complaint too trivial to warrant further action?
 - 5.3.4.5 Does the complainant appear to be malicious or simply tilt for tat?
- 5.3.5 Where it is considered that the complaint does not merit investigation then the decision will be reported to the Member and the Complainant.
- 5.3.6 Prior to any consideration by Conduct Committee all written complaints will first be the subject of a pre-screening process by the Independent Person, the Deputy Independent Person and Chairman of Committee with advice from the Monitoring Officer (although the Monitoring Officer

would not take part in any determination as to whether a complaint can be dismissed without referral to Committee). 9(i)

- 5.3.7 Any complaint where it is considered that a breach of the Code of Conduct may have occurred, unless it is deemed vexatious, trivial or fit for tat will be referred on to Committee for further consideration. In the event that it is the unanimous view of the Independent Person, Deputy Independent Person and Chairman of Committee that there has been no breach of the Code of Conduct and that a complaint does not warrant consideration by Committee then it may be dismissed. In the event that any participant felt unable to make a determination the view of the two remaining members would suffice. In such circumstances all members of the Committee will be notified. It should be made clear that in the event of such a determination there would be no further consideration given to that complaint. 9(ii)

5.4 Investigation of Complaints

- 5.4.1 Where a matter is considered suitable for investigation it will be for the Monitoring Officer in consultation with the Chairman of the Conduct Committee and the Independent Person to determine the level of investigation required and the scope of the investigation.

- 5.4.2 All investigations will need to satisfy the following outcomes:

- 5.4.2.1 Proportionate
- 5.4.2.2 Timely
- 5.4.2.3 Conducted in accordance with accepted investigation protocols,
- 5.4.2.4 Obtain relevant documents to establish background
- 5.4.2.5 Give the complaint and the Member the right to put their case and respond to the information found.

- 5.4.3 In the event of a material change of circumstances the Monitoring Officer in consultation with the Chairman of the Conduct Committee may terminate the investigation and report this to the Conduct Committee. Examples of when this may be appropriate are as follows:

- 5.4.3.1 Compelling evidence is found showing the Member did not breach the Code of Conduct,
- 5.4.3.2 The Member has resigned (or not been re-elected) from the relevant Council, Town or Parish Council,
- 5.4.3.3 The Member is seriously ill, or
- 5.4.3.4 The Member has died.

- 5.4.4 The Investigating Officer will be expected to give their view of the evidence and whether or not a breach of the Code of Conduct has occurred.

⁹⁽ⁱ⁾ Revised scheme approved 26th February 2015

⁹⁽ⁱⁱ⁾ Revised scheme approved 26th February 2015

5.4.5 Once an investigation report is received by the Monitoring Officer they will assess the report and consider if it meets the above criteria. If the Monitoring Officer does not consider that this has been met they will ask the Investigating Officer to undertake further work or report the reason for their failure to conclude a full report.

5.4.6 Consideration of the Investigation Report

5.4.7 Where in the view of the Investigating Officer the Member has not breached the Code of Conduct then the Investigating Officers Report will be taken to the Conduct Committee for their notification.

5.4.8 In the event that the Investigating Officer believes there to be a breach of the Code of Conduct or where they have not been in a position to satisfy the tests in 5.4.2 the matter will be referred to the Conduct Committee for a Hearing.

5.4.9 Hearing Procedure

5.4.10 Prior to the hearing the Monitoring Officer will contact the Member and any relevant witnesses in order to arrange a date at a date and time which will enable attendance by all relevant parties.

5.4.11 If the Councillor is not present at the start of the hearing the Chairman shall ask the Monitoring Officer whether the Councillor or the Councillor's Representative has indicated their intention not to attend the hearing.

5.4.12 If the Councillor has indicated that they do not intend to be present the Conduct Committee shall consider if it is able to continue to hear the matter in their absence. The Committee shall have regard to the following factors:

5.4.12.1 Any reasons provided by the Councillor

5.4.12.2 Any representative or written representations present from the Councillor

5.4.12.3 The views of the Councillor as to whether the hearing should proceed

5.4.12.4 Any comments from the Monitoring Officer

5.4.13 If the Committee are satisfied that the hearing can proceed in the absence of the Councillor without being unreasonable then the hearing can proceed, however if this is not the case then the hearing should be adjourned to a later date.

5.4.14 A Member will be entitled to have a representative attend the hearing with them. This representative may be a solicitor or barrister, however no costs will be recoverable from Fenland District Council for any representative in attendance.

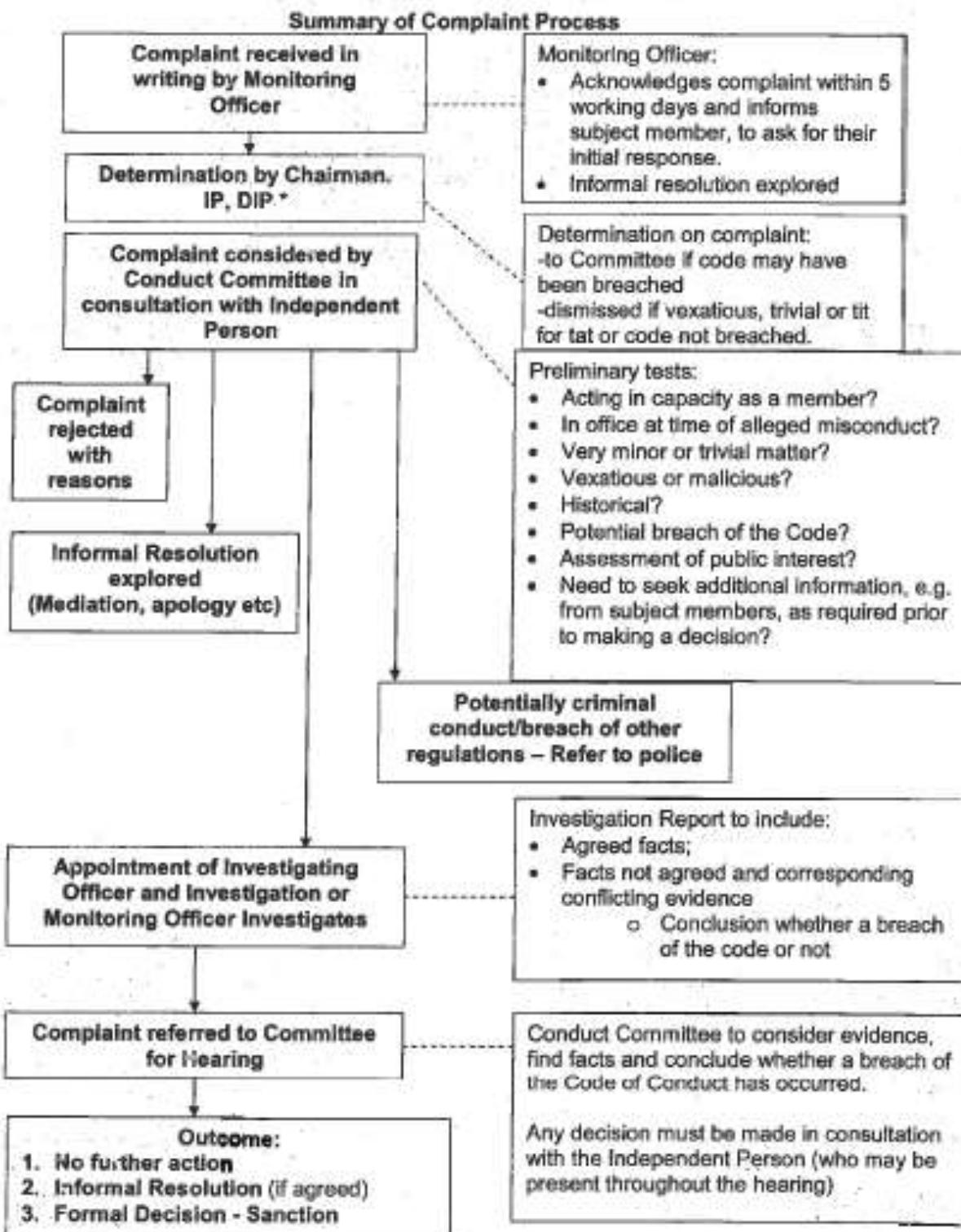
- 5.4.15 The Committee will hear the Investigating Officers report and any witnesses first, and the Member or their representative may ask any relevant questions of the Investigating Officer or their witnesses.
- 5.4.16 The Member will then have an opportunity to present their case including any witnesses, the Investigating Officer will have the right to question the Member or their witnesses.
- 5.4.17 At the conclusion of each sides case the Investigating Officer and then the Member will be given an opportunity to present a summary of their position to the Committee.
- 5.4.18 The Independent Person will be invited to provide their view of the Facts as presented and whether or not these represent a breach of the Code of Conduct.
- 5.4.19 Although no formal time limits will be imposed on the presentations the Chairman will have the right to curtail excessive presentations.
- 5.4.20 The Committee will then determine whether or not there has been a breach of the Code of Conduct and if appropriate what sanction to be imposed.
- 5.4.21 The Committee shall have the right to impose the following sanctions (either individually or in combination):
- 5.4.21.1 Formal Letter of reprimand,
 - 5.4.21.2 Motion of censure at the Conduct Committee,
 - 5.4.21.3 Recommendation to Full Council (or the Town or Parish Council) for a motion of Censure,
 - 5.4.21.4 Formal request to the Members Group Leader for their removal from Committee(s),
 - 5.4.21.5 Offer additional training for the member
 - 5.4.21.6 Withdraw facilities (or recommend to the Town or Parish Council) that facilities such as computers, email, or internet access be suspended for a period of time.
 - 5.4.21.7 Exclude (or recommend to the Town or Parish Council) the Member from the Council's offices or other premises or restrict access to certain officers; excepting access as necessary for the attendance at meetings of the Council, Committees or Sub-Committees.
 - 5.4.21.8 Publication of formal notification of breach in a newspaper circulating in the area.
- 5.4.22 At the end of the hearing the Member and the Complainant and any relevant Town or Parish Council will receive written notification of the Conduct Committees determination.

6 Appeals

- 6.1 There are no direct rights of appeal against the decisions of the Monitoring Officer or the Conduct Committee. If your complaint has not been handled in what you consider to be a satisfactory way you are entitled to raise the issue with the Local Government Ombudsman.

7 Dispensations

- 7.1 The Conduct Committee shall have the right to determine all applications for Dispensations in respect of Pecuniary Interests
- 7.2 A member wishing to receive a dispensation may write to the Monitoring Officer setting out the basis for their Pecuniary Interest and the grounds upon which the dispensation is sought
- 7.3 Dispensations may be granted if the Conduct Committee considers that any of the following grounds are met:
- 7.3.1 considers that without the dispensation the number of persons prohibited from participating in any particular business would be so great a proportion of the body transacting the business (be that the Council, Cabinet, or any Committee) as to impede the transaction of the business,
- 7.3.2 considers that without the dispensation the representation of different political groups on the body transacting any particular business would be so upset as to alter the likely outcome of any vote relating to the business,
- 7.3.3 considers that granting the dispensation is in the interests of persons living in the authority's area, or
- 7.3.4 considers that it is otherwise appropriate to grant a dispensation
- 8 A Dispensation may last for such a period as defined in the decision; but in any event for no longer than four years.



* IP = Independent Person

DIP = Deputy Independent Person

CODE 1 CODE OF CONDUCT FOR MEMBERS¹

The Members' Code of Conduct is intended to promote high standards of behaviour amongst the elected and co-opted members of the council.

The Code is underpinned by the following principles of public life which should borne in mind when interpreting the meaning of the Code:-

- i Selflessness** Holders of public office should act solely in terms of the public interest. They should not do so in order to gain financial or other benefits for themselves, their family or their friends.
- ii Integrity** Holders of public office should not place themselves under any financial or other obligation to outside individuals or organisations that might seek to influence them in the performance of their official duties.
- iii Objectivity** In carrying out public business, including making public appointments, awarding contracts, or recommending individuals for rewards and benefits, holders of public office should make choices on merit.
- iv Accountability** Holders of public office are accountable for their decisions and actions to the public and must submit themselves to whatever scrutiny is appropriate to their office.
- v Openness** Holders of public office should be as open as possible about all the decisions and actions that they take. They should give reasons for their decisions and restrict information only when the wider public interest clearly demands.
- vi Honesty** Holders of public office have a duty to declare any private interests relating to their public duties and to take steps to resolve any conflicts arising in a way that protects the public interest.
- vii Leadership** Holders of public office should promote and support these principles by leadership and example.

PART 1 GENERAL PROVISIONS

1. Introduction and Interpretation

- 1.1.** This Code applies to you as a member of Fenland District Council (Fenland).
- 1.2.** The term "the Authority" used in this Code refers to Fenland.
- 1.3.** "Member" means any person being an elected or co-opted member of the Authority.
- 1.4.** It is your responsibility to comply with the provisions of this Code.

¹ New code adopted 26th July 2012

1.5. In this Code –

"Meeting" means any meeting of:-

- a) The Authority;
- b) Any meetings with the Council's officers;
- c) Any of the Authority's Committees, sub-committees, joint committees, joint sub-committees, or area committees;
- d) Any site visits to do the business of the Authority;
- e) Any of the Authority's advisory groups and, working parties and panels.

1.6. In this Code "relevant authority" has the meaning given to it by section 27(8) of the Localism Act 2011.

2. **Scope**

2.1. You must comply with this Code whenever you act, claim to act or give the impression you are acting in your official capacity as a Member of the Authority.

2.2. Where you act as a representative of the Authority:-

- (a) on another relevant authority, you must, when acting for that other authority, comply with that other authority's code of conduct; or
- (b) on any other body, you must, when acting for that other body, comply with your authority's code of conduct, except and insofar as it conflicts with any other lawful obligations to which that other body may be subject.

3. **General obligations**

3.1. You must treat others with respect.

3.2. You must not:-

(a) do anything, which may cause the Authority to breach UK equalities legislation.

(b) bully any person.

(c) intimidate or attempt to intimidate any person who is or is likely to be:-
(i) a complainant,
(ii) a witness, or
(iii) involved in the administration of any investigation or proceedings.

In relation to an allegation that a Member (including yourself) has failed to comply with his or her authority's code of conduct.

(d) do anything, which compromises or is likely to compromise the impartiality of those who work for, or on behalf of, the Authority.

- (e) conduct yourself in a manner, which could reasonably be regarded as bringing your office or authority into disrepute.
4. You must not:-
- 4.1. disclose information given to you in confidence by anyone, or information acquired by you which you believe, or ought reasonably to be aware, is of a confidential nature, except where:-
 - (a) you have the consent of a person authorised to give it;
 - (b) you are required by law to do so;
 - (c) the disclosure is made to a third party for the purpose of obtaining professional advice provided that the third party agrees not to disclose the information to any other person; or
 - (d) the disclosure is:-
 - (i) reasonable and in the public interest; and
 - (ii) made in good faith and in compliance with the reasonable requirements of the authority.
- 4.2. prevent another person from gaining access to information to which that person is entitled by law.
5. You must not:-
- 5.1. use or attempt to use your position as a member improperly to confer, or secure for yourself or any other person, an advantage or disadvantage.
6. You must:-
- 6.1. when using or authorising the use by others of the resources of the Authority:-
 - (a) act in accordance with your Authority's reasonable requirements;
 - (b) ensure that such resources are not used improperly for political purposes (including party political purposes); and
 - 6.2. have regard to any Local Authority Code of Publicity made under the Local Government Act 1986.

PART 2 INTERESTS

7. Disclosable Pecuniary Interests

7.1. Breaches of the rules relating to Disclosable Pecuniary Interests may lead to criminal sanctions.

7.2. You have a Disclosable Pecuniary Interest if it is of a description specified in Regulations made by the Secretary of State (Appendix A) and either:

- (a) It is an interest of yours, or
- (b) It is an interest of:
 - (i) your spouse or civil partner,
 - (ii) a person with whom you are living as husband and wife, or
 - (iii) a person with whom you are living as if you were civil partners,

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

8. Registration of Disclosable Pecuniary Interests

8.1. Subject to paragraph 12 (sensitive interests), you must, within 28 days of:

- (a) this Code being adopted or applied by the Authority; or
- (b) your election or appointment (where that is later),
notify the Authority's Monitoring Officer in writing of any Disclosable Pecuniary Interests you have at that time.

8.2. Subject to paragraph 12 (sensitive interests), you must, within 28 days of becoming aware of any new Disclosable Pecuniary Interest or any change to any such interest, notify the Authority's Monitoring Officer in writing of that new Disclosable Pecuniary Interest or change.

9. Disclosable Pecuniary Interests in matters considered at meetings

9.1. If you attend a meeting and have and are aware that you have a Disclosable Pecuniary Interest in any matter to be considered, or being considered, at that meeting, –

- (a) you must disclose to the meeting the fact that you have a Disclosable Pecuniary Interest in that matter. If you have not already done so, you must notify the Authority's Monitoring Officer of the interest before the end of 28 days beginning with the date of the disclosure, and
- (b) whether the interest is registered or not you must not – unless you have obtained a dispensation from the Authority's Monitoring Officer –
 - (i) participate, or participate further, in any discussion of the matter or vote at the meeting; or
 - (ii) remain in the meeting room whilst the matter is being debated or participate in any vote taken on the matter at the meeting.

Note: Council Procedure Rule 13 requires you to leave the room where the meeting is held while any discussion or voting takes place.

10. Other Interests

10.1. In addition to the requirements of Paragraph 3, if you attend a meeting at which any item of business is to be considered and

you are aware that you have a "non-disclosable pecuniary interest or non-pecuniary interest" in that item, you must make verbal declaration of the existence and nature of that interest at or before the consideration of the item of business or as soon as the interest becomes apparent

10.2. You have a "non-disclosable pecuniary interest or non-pecuniary interest" in an item of business of your authority where -

- (a) a decision in relation to that business might reasonably be regarded as affecting the well-being or financial standing of you or a member of your family or a person with whom you have a close association to a greater extent than it would affect the majority of the Council Tax payers, ratepayers or inhabitants of the ward or electoral area for which you have been elected or otherwise of the authority's administrative area, or
- (b) it relates to or is likely to affect any of the interests listed in the Table in the Appendix to this Code, but in respect of a member of your family (other than a "relevant person") or a person with whom you have a close association and that interest is not a disclosable pecuniary interest.

12. Sensitive interests

- 12.1** Where you consider (and the Authority's Monitoring Officer agrees) that the nature of a Disclosable Pecuniary or Personal Interest is such that disclosure of the details of the interest could lead to you or a person connected with you being subject to intimidation or violence, it is a "sensitive interest" for the purposes of the Code, and the details of the sensitive interest do not need to be disclosed to a meeting, although the fact that you have a sensitive interest must be disclosed, in accordance with paragraphs 8-9 and 10.

Note: Register of interests

Interests under paragraph 8 will be notified to the Monitoring Officer on a form approved for the purpose by the Monitoring Officer and for this purpose will be deemed the "register of interests". A copy of the register will be available for public inspection and will be published on the authority's website.

13. Gifts and Hospitality

- 13.1** You must, within 28 days of receipt, notify the Monitoring Officer in writing of any gift, benefit or hospitality with a value in excess of £100 which you have accepted as a member from any person or body other than the authority.

Appendix A

Disclosable Pecuniary Interests

This note explains the requirements of the Localism Act 2011 (Ss 29-34) in relation to Disclosable Pecuniary Interests. These provisions are enforced by criminal sanction. They come into force on 1 July 2012.

1 Notification of Disclosable Pecuniary Interests

Disclosable Pecuniary Interest	description
Employment, office, trade, profession or vocation	Any employment, office, trade, profession or vocation carried on for profit or gain.
Sponsorship	Any payment or provision of any other financial benefit (other than from the relevant authority) made or provided within the relevant period in respect of any expenses incurred by M in carrying out duties as a member, or towards the election expenses of M. This includes any payment or financial benefit from a trade union within the meaning of the Trade Union and Labour Relations (Consolidation) Act 1992.
Contracts	Any contract which is made between the relevant person (or a body in which the relevant person has a beneficial interest) and the relevant authority— (a) under which goods or services are to be provided or works are to be executed; and (b) which has not been fully discharged.
Land	Any beneficial interest in land, which is within the area of the relevant authority.
Licences	Any licence (alone or jointly with others) to occupy land in the area of the relevant authority for a month or longer.
Corporate tenancies	Any tenancy where (to M's knowledge)— (a) the landlord is the relevant authority; and (b) the tenant is a body in which the relevant person has a beneficial interest.
Securities	Any beneficial interest in securities of a body where— (a) that body (to M's knowledge) has a place of business or land in the area of the relevant authority; and (b) either— (i) the total nominal value of the securities exceeds £25,000 or one hundredth of the total issued share capital of that body; or (ii) if the share capital of that body is of more than one class, the total nominal value of the shares of any one class in which the relevant person has a beneficial

Interest exceeds one hundredth of the total issued share capital of that class.

These descriptions on interests are subject to the following definitions:

"the Act" means the Localism Act 2011;

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

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

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

"M" means a member of a relevant authority;

"Member" includes a co-opted member;

"relevant authority" means the authority of which M is a member;

"relevant period" means the period of 12 months ending with the day on which M gives a notification for the purposes of section 30(1) or section 31(7), as the case may be, of the Act;

"relevant person" means M or any other person referred to in section 30(3)(b) of the Act;

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

Offences

It is a criminal offence to:

- Fail to notify the Monitoring Officer of any Disclosable Pecuniary Interest within 28 days of election
- Fail to disclose a Disclosable Pecuniary Interest at a meeting if it is not on the register
- Fail to notify the Monitoring Officer within 28 days of a Disclosable Pecuniary Interest that is not on the register that you have disclosed to a meeting
- Participate in any discussion or vote on a matter in which you have a Disclosable Pecuniary Interest (without a dispensation)
- Knowingly or recklessly providing information that is false or misleading in notifying the Monitoring Officer of a Disclosable Pecuniary Interest or in disclosing such interest to a meeting

The criminal penalties available to a court are to impose a fine not exceeding level 5 on the standard scale and disqualification from being a Councillor for up to 5 years.

Enclosure 10.3