

AGENDA

Meeting: **STANDARDS HEARING SUB-COMMITTEE**
Place: **County Hall, Bythesea Road, Trowbridge**
Date: **Monday 5 July 2010**
Time: **9.30 am**

Please direct any enquiries on this Agenda to Liam Paul, of Democratic Services, County Hall, Trowbridge, direct line (01225) 718376 or email liam.paul@wiltshire.gov.uk

Press enquiries to Communications on direct lines (01225)713114/713115.

All public reports referred to on this agenda are available on the Council's website at www.wiltshire.gov.uk

Membership:

Wiltshire Council Members

Cllr Malcolm Hewson

Town/Parish Council Co-opted Members

Mr Paul Neale

Independent Co-opted Members

Mr Gerry Robson OBE

Part 1

Items to be considered when the meeting is open to the public

1. Election of Chairman

To confirm the Chairman of the meeting who must be an Independent member.

2. Declarations of Interest

To receive any declarations of personal or prejudicial interest.

3. Exclusion of the Press and Public

To consider passing the following resolution:

To agree that in accordance with Section 100A(4) of the Local Government Act 1972 to exclude the public from the meeting for the business specified in Item Number 4 because it is likely that if members of the public were present there would be disclosure to them of exempt information as defined in paragraph 7(c) of Part I of Schedule 12A to the Act and the public interest in withholding the information outweighs the public interest in disclosing the information to the public.

Part II

Item during whose consideration it is recommended that the public should be excluded because of the likelihood that exempt information would be disclosed

4. Standards Committee Hearing regarding the alleged conduct of Cllr Maurice Flanagan, Dilton Marsh Parish Council

4.1. Consideration of the Investigator's Report (Pages 1 - 62)

To consider an investigation report (produced under Section 59 of the Local Government Act 2000) pertaining to a complaint made to the Standards Committee regarding the conduct of Councillor Maurice Flanagan, Dilton Marsh Parish Council.

4.2. Pre-Hearing Process Summary (Pages 63 - 68)

Please see attached summary.

4.3. Procedure of Determination of Referred Complaints by the Standards Committee (Pages 69 - 76)

Please see attached protocol.

WILTSHIRE COUNCIL

STANDARDS HEARING SUB-COMMITTEE 5 July 2010

Consideration of an Investigator's report

Complaint regarding the alleged conduct of Councillor Maurice Flanagan – Dilton Marsh Parish Council

1. On 15 October 2009 the Monitoring Officer of Wiltshire Council received a complaint from Mr Edward Whiting regarding the alleged conduct of Councillor Maurice Flanagan, a member of Dilton Marsh Parish Council. The complaint is included within the Investigator's report at **Appendix A** (pages 22-25 of the Schedule of Evidence).
2. The complaint concerns allegations that Councillor Flanagan has failed to comply with the statutory requirement to register his interests within 28 days of assuming office as a member of Dilton Marsh Parish Council.
3. The complainant alleges that Councillor Flanagan's behaviour breached paragraph 13(1) of the Code of Conduct:

13 - (1) subject to paragraph 14, you must, within 28 days of-

- a. this Code being adopted by or applied to your authority;
or
- b. your election or appointment to officer (where that is later),

register in your authority's register of members interests....details of your personal interests where they fall within a category mentioned in paragraph 8(1)(a) by providing written notification to your authority's monitoring officer.

4. Dilton Marsh Parish Council has adopted the Model Code of Conduct for Members including paragraph 12 (2) (**enclosed**).
5. On 19 November 2009, the Standards Assessment Sub-Committee of Wiltshire Council considered the complaint regarding Councillor Flanagan. In accordance with section 57A(2) of the Local Government Act 2000 as amended, the Assessment Sub-Committee decided that the complaint should be referred to the Monitoring Officer for investigation.

6. The Monitoring Officer delegated his investigatory powers to Mrs Marie Lindsay, Ethical Governance Officer, pursuant to section 82A of the Local Government Act 2000. An extract from the Investigator's report is enclosed at **Appendix A**.
7. The Investigator's report found that there **has** been a breach of paragraph 13(1) of the Code of Conduct.
8. On 15 April 2010 the Investigator's report went before the Standards Consideration Sub-Committee. The Sub-Committee considered the alleged breach of paragraph 13(1) of the Code of Conduct as set out in point 3 above. The Sub-Committee agreed that the matter should be referred to a Standards Committee Hearing for determination, pursuant to paragraph 17 (1) (b) of the Standards Committee (England) Regulations 2008.
9. The Hearing Sub-Committee is therefore required to determine whether Councillor Flanagan breached paragraph 13(1) of the Code of Conduct.

Ian Gibbons, Monitoring Officer

Report Author: Marie Lindsay, Ethical Governance Officer

Tel: 01225 718465

Date of report: 16 June 2010

Background Papers

Final Investigation Report – 9 March 2010

PRIVATE AND CONFIDENTIAL

EXTRACT FROM FINAL REPORT

Case Reference: WC 38/09

Report of an investigation under Section 57(A)(2)(a) of the Local Government Act 2000 as amended and Regulation 14 of the Standards Committee (England) Regulations 2008, by Marie Lindsay, appointed by the Monitoring Officer for Wiltshire Council into an allegation concerning Councillor Maurice Flanagan.

DATE: 15th June 2010

Contents

- 1 Executive summary**
- 2 Councillor Maurice Flanagan's official details**
- 3 The relevant legislation**
- 4 The evidence gathered**
- 5 The complaint**
- 6 Summary of the material facts**
- 7 Councillor Flanagan's additional submissions**
- 8 Reasoning as to whether there have been failures to comply with the Code of Conduct**
- 9 Finding**

Appendix A Schedule of evidence taken into account and list of unused material

1. Executive summary

- 1.1 On 15th October 2009 the Monitoring Officer of Wiltshire Council received a complaint from Mr Edward Whiting regarding the alleged conduct of Councillor Maurice Flanagan, a member of Dilton Marsh Parish Council.
- 1.2 In summary, the allegation is that Councillor Flanagan has:
- failed to comply with the statutory requirement to register his interests within 28 days of assuming office as a member of Dilton Marsh Parish Council

Remainder of paragraph removed

- 1.3 On 19th November 2009 the Assessment Sub-committee of Wiltshire Council's Standards Committee considered the complaint. In accordance with Section 57A(2) of the Local Government Act 2000, as amended, the Assessment Sub-committee of the Standards Committee decided to refer the complaint to the Monitoring Officer for investigation.
- 1.4 The Monitoring Officer delegated his investigatory powers to Marie Lindsay, Ethical Governance Officer, pursuant to section 82A of the Local Government Act 2000
- 1.5 The investigation was undertaken in accordance with the statutory framework for investigations and guidance issued by Standards for England. The Investigating Officer has found that Councillor Flanagan failed to complete his register of members' interests within 28 days of his appointment to office, thereby breaching paragraph 13 (1) of the Code of Conduct.

Remainder of paragraph removed.

- 1.6 Attached to this report is a schedule of evidence containing the documents referred to in it.

2 Councillor Flanagan's official details

- 2.1 Councillor Maurice Flanagan was co-opted to Dilton Marsh Parish Council on 16th October 2008. He had previously been a member of the parish council for a period of one term ending in approximately 1990.
- 2.2 Councillor Flanagan does not serve on any committees of Dilton Marsh Parish Council.
- 2.3 Councillor Flanagan gave a written undertaking to observe the Code of Conduct on 16th October 2008.

- 2.4 Councillor Flanagan has not received any formal training on the Code of Conduct. However, the Clerk to Dilton Marsh Parish Council has advised that, when a new Councillor is appointed, he personally explains the Code of Conduct to them in general terms and gives them copies of documents including Standards for England's 'The Code of Conduct Guide for Members' and the National Association of Local Councils 'The Good Councillor's Guide'. Additionally, the material on the Code of Conduct issued by Wiltshire Council in August 2009 has been distributed by the Clerk to members of the Parish Council.

3 The relevant legislation

- 3.1 Dilton Marsh Parish Council passed a resolution on 20th September 2007 to adopt the Model Code of Conduct, including paragraph 12(2), in which the following paragraphs are included:

- 13 - (1) *Subject to paragraph 14, you must, within 28 days of -*
 - a. *This Code being adopted by or applied to your authority; or*
 - b. *Your election or appointment to office (where that is later),*

Register in your authority's register of members' interests...details of your personal interests where they fall within a category mentioned in paragraph 8(1)(a) by providing written notification to your authority's monitoring officer

Remainder of paragraph removed.

4 The evidence gathered

- 4.1 I have taken account of oral evidence from:
- The complainant, Mr Edward Whiting
 - The subject member, Councillor Maurice Flanagan
- 4.2 I have also taken account of the following documentary evidence:
- Email correspondence with the Clerk to Dilton Marsh Parish Council

Remainder of paragraph removed

5 The complaint

- 5.1 Mr Whiting's complaint is set out in his email of 12th October 2008 (Appendix A1.2, page 17) as follows:

‘Mr Flanagan, a Parish Counsellor for Dilton Marsh failed to disclose his register of interest within the time required.

Therefore, he failed to disclose his interest in 69 The High St, Dilton Marsh.

Remainder of paragraph removed.

5.2 Paragraph removed

5.3 Paragraph removed

5.4 Paragraph removed

6. Summary of the material facts

6.1 Councillor Flanagan is a member of Dilton Marsh Parish Council and as a member of the Council is subject to the Code of Conduct.

6.2 Paragraph removed

6.3 Paragraph removed

6.4 Paragraph removed

6.5 Paragraph removed

6.6 Paragraph removed

6.7 Turning to Mr Whiting’s complaint against Councillor Flanagan, the first element of his complaint is that Councillor Flanagan has failed to complete his register of members’ interests within the required timescale.

6.8 Mr Whiting confirms that he first became aware that Councillor Flanagan had not completed his register of members’ interests when he contacted Wiltshire Council in early October 2009 to find out if Councillor Flanagan had declared an interest in 69 The High Street, Dilton Marsh. These enquiries were made prior to Mr Whiting submitting his formal complaint against Councillor Flanagan.

6.9 Mr Whiting spoke to Henry Powell, Democratic Services Officer, who advised him that Councillor Flanagan’s register of members’ interest form had not been received at Wiltshire Council. Mr Powell made enquiries with the Clerk to Dilton Marsh Parish Council who confirmed that he did not have a copy of Councillor Flanagan’s register of interests. The Clerk advised Mr Powell that he understood from Councillor Flanagan that he had posted his register of interests form direct to Wiltshire Council the previous day.

- 6.10 Upon receipt of the complaint by Mr Whiting on 15 October 2009, further enquiries were made with the Clerk to Dilton Marsh Parish Council about Councillor Flanagan's register of members' interests. On 4 November the Clerk confirmed his understanding that Councillor Flanagan's register of interests form had been sent direct by Councillor Flanagan to Wiltshire Council, although he did not indicate when he thought this had been sent (see Appendix A3.6, page 57).
- 6.11 Councillor Flanagan admits that he failed to complete and return the register of members' interests form within 28 days of his appointment to office. He confirms that upon his appointment on 16th October 2008 he completed his declaration of acceptance of office form straight away and was given the register of members' interests form to take away and complete. He did not understand the significance of returning the form within 28 days and it was not until he was reminded by the Clerk that he returned it direct to West Wiltshire District Council. He returned the form in March/April 2009 and on it he declared an interest in 69 The High Street, Dilton Marsh. He confirms that he sent it direct to West Wiltshire District Council rather than the Clerk because he realised that 'time was of the essence' and he cannot remember the Clerk implying that it must be returned to him. Councillor Flanagan states that he had no reason to believe that the form had not been received.
- 6.12 With regard to the comments of the Clerk in October 2009 stating that he understood that Councillor Flanagan had posted his form direct to Wiltshire Council the previous day, Councillor Flanagan confirms that this must be a misunderstanding on behalf of the Clerk. He has only completed one register of members' interests form and this was sent to West Wiltshire District Council in March or April 2009.
- 6.13 All forms held previously by West Wiltshire District Council were transferred to Wiltshire Council on 1 April 2009. Councillor Flanagan's form was not amongst the records transferred.
- 6.14 Enquiries with the Clerk to Dilton Marsh Parish Council show that the Clerk does not hold the register of members' interests forms for a total of three out of the 13 members of the Parish Council. He confirmed by email on 29 November 2009 that he gave all newly elected or co-opted councillors clear instructions to complete the form and return it to him within 28 days in line with guidance issued by West Wiltshire District Council which stated that: *'the forms should be returned to the Clerk who will check that every question has been answered and then send the form to the Monitoring Officer at West Wiltshire District Council'*. The Clerk confirms that he mistakenly held onto the forms in his possession instead of forwarding them on to West Wiltshire District Council, although he also states that West Wiltshire District Council never asked for the missing forms (see Appendix A3.7, page 58 and Appendix A3.9, page 61).

- 6.15 On 26 November 2009, as part of a county-wide initiative, Wiltshire Council wrote to the Clerk to obtain a complete and up to date set of the register of members interests forms for all members of Dilton Marsh Parish Council. At the time of writing this report Councillor Flanagan's register of interests form has not been received by Wiltshire Council.
- 6.16 With regard to disclosing an interest in 69 The High Street, Dilton Marsh, Councillor Flanagan states that he did include the property on the register of members' interests form that he completed in March/April 2009. However, as already stated, this form was never received by West Wiltshire District Council or its successor, Wiltshire Council.
- 6.17 Paragraph removed
- 6.18 Paragraph removed
- 6.19 Paragraph removed
- 6.20 Paragraph removed
- 6.21 Paragraph removed
- 6.22 Paragraph removed
- 6.23 Paragraph removed
- 6.24 Paragraph removed
- 6.25 Paragraph removed
- 6.26 Paragraph removed
- 6.27 Paragraph removed

7 Councillor Flanagan's additional submissions

- 7.1 In response to the draft report issued on 15th February 2010, Councillor Flanagan has made the following submissions:

'I thank you for your early completion of the draft report. I am happy in the main and agree with your conclusions and hope that this now quickly resolves the matter. It interestingly did raise the issue that late submission of members' interests was not just restricted to myself. The only point that may need alteration is the date I served previously on the Parish Council was about 1990.'

Remainder of paragraph removed.

8 Reasoning as to whether there have been failures to comply with the Code of Conduct

8.1 Councillor Flanagan is accused of failing to comply with the following paragraphs of the Code of Conduct:

- 13 - (1) *Subject to paragraph 14, you must, within 28 days of -*
 - a. *This Code being adopted by or applied to your authority; or*
 - c. *Your election or appointment to office (where that is later),*

Register in your authority's register of members' interests...details of your personal interests where they fall within a category mentioned in paragraph 8(1)(a) by providing written notification to your authority's monitoring officer

Remainder of paragraph removed

8.2 Firstly, I will address the allegation that Councillor Flanagan has failed to submit his register of members' interests within 28 days of the Code of Conduct being adopted by Dilton Marsh Parish Council, or his appointment to office where that is later.

8.3 Dilton Marsh Parish Council adopted the Code of Conduct on 20th September 2007 and Councillor Flanagan was co-opted onto the Parish Council on 16th October 2008. Councillor Flanagan admits that he did not submit his register of interests form until March or April 2009 after being reminded to do so by the Clerk.

8.4 There has been some degree of confusion by the Clerk to Dilton Marsh Parish Council about the procedure for submitting or retaining the forms. However, Councillor Flanagan completed his declaration of acceptance of office on 16th October 2008 and by doing so signed an undertaking to observe the Code of Conduct. The Code of Conduct places the onus on the member to submit their register of interests' form within 28 days of taking office and, by his own admission, Councillor Flanagan did not do this until March or April 2009, some four months later. At the time of writing this report Councillor Flanagan's register of interests form has not been received by Wiltshire Council.

8.5 Turning to the allegation that Councillor Flanagan has failed to declare an interest in no.69 The High Street, there is no doubt that this property is required to be declared by Councillor Flanagan in his register of members' interests. Councillor Flanagan owns a share of the property and his name is on the title deeds.

8.6 By not submitting his register of members' interests until March or April 2009, Councillor Flanagan also failed to register an interest in no.69 The High Street within 28 days of his acceptance of office.

8.7 Paragraph removed

8.8 Paragraph removed

8.9 Paragraph removed

8.10 Paragraph removed

8.11 Paragraph removed

9 Finding

9.1 The finding of the Investigating Officer is that Councillor Flanagan has breached paragraph 13(1) of the Code of Conduct by failing to register his members' interests within 28 days of his appointment to office.

9.2 Paragraph removed

9.3 Paragraph removed

Appendix A

Schedule of evidence taken into account

Case No: WC 38/09

Core documents

Doc No	Description	Pages
A1.1	Email detailing Mr Whiting's initial contact with Wiltshire Council regarding Councillor Flanagan's register of members' interests, 6 October 2009	16
A1.2	Removed	17-21
A.1.3	Complaint form submitted by Mr Whiting, 12 October 2009	22-25
A1.4	Removed	26-27
A1.5	Removed	28-29
A1.6	Removed	30-32
A1.7	Code of Conduct adopted by Dilton Marsh Parish Council on 20 September 2007	33-37
A1.8	Declaration of Acceptance of Office of Councillor Flanagan dated 16 October 2008	38

Notes of telephone conversations, letters, and interviews with witnesses

Doc No	Description	Pages
A2.1	Record of interview with Mr Whiting, 16 December 2009	39-41
A2.2	Letter from Councillor Flanagan in response to the allegations, 4 January 2010	42-43
A2.3	Record of interview with Councillor Flanagan, 14 January 2010	44-45
A2.4	File note detailing points of clarification during a telephone call to Councillor Flanagan, 8 February 2010	46

Minutes of meetings and other documentary evidence

Doc No	Description	Pages
A3.1	Removed	47
A3.2	Report to Standards (Assessment) Sub-Committee, 19 November 2009	48-49

A3.3	Decision notice of Assessment Sub-Committee, 19 November 2009	50-51
A3.4	Letter from Monitoring Officer appointing Investigating Officer, 7 December 2009	52-53
A3.5	Investigation Plan, 8 December 2009	54-56
A3.6	Email from the Clerk to Dilton Marsh Parish Council regarding register of interests forms and adoption of Code of Conduct, 4 November 2009	57
A3.7	Letter from the Clerk enclosing those register of members' interest forms and declaration of acceptance of office forms currently held by him, 10 November 2009	58-59
A3.8	Letter to the Clerk regarding the completed forms, 26 November 2009	60
A3.9	Email from the Clerk concerning the procedures for obtaining register of members' interests forms, 29 November 2009	61
A3.10	Removed	62
A3.11	Removed	63
A3.12	Removed	64
A3.13	Email from the Clerk confirming Code of Conduct training provided to members of the Parish Council, 25 January 2010	65

Councillor Flanagan's comments on draft report

Doc No	Description	Pages
	None to date	

List of unused materials

None

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Appendix A

Schedule of evidence taken into account

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A3.10	Removed	62
A3.11	Removed	63
A3.12	Removed	64
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Councillor Flanagan's comments on draft report

Doc No	Description	Pages
	None to date	

List of unused materials

None

A1.1

From: Powell, Henry
Sent: 06 October 2009 09:52
To: Wilton, Nina
Subject: Cllr Morris Flanagan

Hi Nina

Details as per telephone conversation:

Last week I had a call from a Mr Whiting who wished to see the register of interests of Cllr Morris Flanagan of Dilton Marsh. [REDACTED]

Cllr Flanagan's ROI isn't in our file so I contacted the clerk (Mr Coleman). The clerk is sending all of the ROIs he still has in his possession to us asap, but they don't include Cllr Flanagan's, as he has never completed one (or at least given it to the clerk). He was elected in October 2008.

The clerk says Cllr Flanagan claims to have posted his ROI direct to us yesterday.

I'll call Mr Whiting and advise of the above. We'll see if the ROI turns up.

Henry

t. 01225 718052

A1.3

Complaint Form – Members’ Code of Conduct

Your details

1. Please provide us with your name and contact details

Title	Mr
First name	Edward
Last name	Whiting
Address	67 The High St Dilton Marsh Nr Westbury Wiltshire BA13 4DW
Daytime telephone	[REDACTED]
Evening telephone	[REDACTED]
Mobile	[REDACTED]
e-mail address	[REDACTED]

We will not disclose your contact details to anyone unless it is necessary to do so in order to deal with your complaint.

However, we will tell the following people that you have made a complaint:

- The council member you have complained about
- The Monitoring Officer
- The members of the assessment sub-committee of the council's Standards Committee
- The corporate standards manager

2. Please tick the box that best describes you:

Member of the public	X
Elected or co-opted member of an authority	
An independent member of the Standards Committee	
Member of Parliament	
Monitoring Officer	
Other council/local authority employee	
Other (please specify)	

3. Please give us the name of the member(s) you believe may have breached the Code of Conduct and their council.

First name	Last name	Authority
Maurice	Flanagan	Dilton Marsh Parish

4. Please explain how you think the member has broken the Code of Conduct. If you are complaining about more than one member you need to explain exactly how each one of them may have broken the Code.

It is important that you give us all the information you want the assessment sub-committee to take into account. They will use the information you give to decide whether or not to take any action about your complaint. For example, please make sure you tell us:

- Exactly what you are alleging the member said or did. For instance, instead of saying that the member insulted you, you should state what it was they said;
- You should give the dates of the alleged incident(s) wherever possible. Where you cannot do that, you must at least provide a general timeframe;
- You should let us know whether there were any witnesses to the alleged incident(s) and provide their names and contact details if possible;
- You should provide any relevant background information.

Please write down the details of your complaint here. Continue on a separate sheet if there is not enough space on this form.

Mr Flanagan, a Parish Counselor for Dilton Marsh failed to disclose his register of interest within the time required.

[REDACTED]

[REDACTED]

[REDACTED]

description of your desired outcome

Clear and concise to 1/ Disciplinary action for the failing to act within the Counselors rules, despite previous role as Counselor.

[REDACTED]

Only complete this section if you are asking us to keep your identity confidential

5. In the interests of fairness and natural justice, we believe that members who are complained about have a right to know who made the complaint. We also believe they have a right to receive a summary of the complaint. We are unlikely to withhold your identity or the nature of your complaint unless you have good reason to believe that releasing that information would result in:
 - You or your witnesses being unlawfully bullied or intimidated or;

- The destruction of information or evidence that would seriously hamper an investigation into the complaint.

We will not automatically agree to a request to keep your identity or the substance of your complaint confidential. Your request and your reasons for asking for confidentiality will be considered by the assessment sub-committee at the same time as they consider whether or not to proceed with your complaint. If they decide that your identity and information about your complaint must be released to the member you are complaining about, we will let you know. Normally we would then allow you to withdraw your complaint if you wish to do so.

However, under exceptional circumstances where a complaint is very serious, we can proceed with an investigation and disclose your name even if you have expressly asked us not to.

Please provide us with details of why you believe we should withhold your name and/or a summary of your complaint from the member:

[REDACTED]

Additional help

Complaints should normally be submitted in writing. However, if you have any specific needs, for example if you have a disability, or if English is not your first language, we can provide you with help to make your complaint. If you would like help, please contact Nina Wilton, on 01225 713078.

Local Authorities (Model Code of Conduct) Order 2007 No.1159

THE MODEL CODE OF CONDUCT
FOR PARISH AND TOWN COUNCILS

Part 1

General provisions

Introduction and interpretation

- 1.—(1) This Code applies to you as a member of an authority.
- (2) You should read this Code together with the general principles prescribed by the Secretary of State (see Annexure to this Code).
- (3) It is your responsibility to comply with the provisions of this Code.
- (4) In this Code—
- “meeting” means any meeting of—
- the authority;
 - any of the authority's committees or sub-committees, joint committees or joint sub-committees;
- “member” includes a co-opted member and an appointed member.
- (5) References to an authority's monitoring officer and an authority's standards committee shall be read, respectively, as references to the monitoring officer and the standards committee of the district council or unitary county council which has functions in relation to the parish council for which it is responsible under section 55(12) of the Local Government Act 2000.

Scope

- 2.—(1) Subject to sub-paragraphs (2) to (5), you must comply with this Code whenever you—
- conduct the business of your authority (which, in this Code, includes the business of the office to which you are elected or appointed); or
 - act, claim to act or give the impression you are acting as a representative of your authority,
- and references to your official capacity are construed accordingly.
- (2) Subject to sub-paragraphs (3) and (4), this Code does not have effect in relation to your conduct other than where it is in your official capacity.
- (3) In addition to having effect in relation to conduct in your official capacity, paragraphs 3(2)(c), 5 and 6(a) also have effect, at any other time, where that conduct constitutes a criminal offence for which you have been convicted.
- (4) Conduct to which this Code applies (whether that is conduct in your official capacity or conduct mentioned in sub-paragraph (3)) includes a criminal offence for which you are convicted (including an offence you committed before the date you took office, but for which you are convicted after that date).
- (5) Where you act as a representative of your authority—
- on another relevant authority, you must, when acting for that other authority, comply with that other authority's code of conduct; or
 - 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.

General obligations

- 3.—(1) You must treat others with respect.
- (2) You must not—
- (a) do anything which may cause your authority to breach any of the equality enactments (as defined in section 33 of the Equality Act 2006(a));
 - (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; or
 - (d) do anything which compromises or is likely to compromise the impartiality of those who work for, or on behalf of, your authority.
4. You must not—
- (a) disclose information given to you in confidence by anyone, or information acquired by you which you believe, or ought reasonably to be aware, is of a confidential nature, except where—
 - (i) you have the consent of a person authorised to give it;
 - (ii) you are required by law to do so;
 - (iii) the disclosure is made to a third party for the purpose of obtaining professional advice provided that the third party agrees not to disclose the information to any other person; or
 - (iv) the disclosure is—
 - (aa) reasonable and in the public interest; and
 - (bb) made in good faith and in compliance with the reasonable requirements of the authority; or
 - (b) prevent another person from gaining access to information to which that person is entitled by law.
5. You must not conduct yourself in a manner which could reasonably be regarded as bringing your office or authority into disrepute.
6. You—
- (a) 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
 - (b) must, when using or authorising the use by others of the resources of your authority—
 - (i) act in accordance with your authority's reasonable requirements; and
 - (ii) ensure that such resources are not used improperly for political purposes (including party political purposes).
 - (c) must have regard to any applicable Local Authority Code of Publicity made under the Local Government Act 1986.
7. Paragraph 7 does not apply to your authority.

(a) 2006 c.3.

Part 2
Interests

Personal interests

- 8.—(1) You have a personal interest in any business of your authority where either—
- (a) it relates to or is likely to affect—
 - (i) any body of which you are a member or in a position of general control or management and to which you are appointed or nominated by your authority;
 - (ii) any body—
 - (aa) exercising functions of a public nature;
 - (bb) directed to charitable purposes; or
 - (cc) one of whose principal purposes includes the influence of public opinion or policy (including any political party or trade union), of which you are a member or in a position of general control or management;
 - (iii) any employment or business carried on by you;
 - (iv) any person or body who employs or has appointed you;
 - (v) any person or body, other than a relevant authority, who has made a payment to you in respect of your election or any expenses incurred by you in carrying out your duties;
 - (vi) any person or body who has a place of business or land in your authority's area, and in whom you have a beneficial interest in a class of securities of that person or body that exceeds the nominal value of £25,000 or one hundredth of the total issued share capital (whichever is the lower);
 - (vii) any contract for goods, services or works made between your authority and you or a firm in which you are a partner, a company of which you are a remunerated director, or a person or body of the description specified in paragraph (vi);
 - (viii) the interests of any person from whom you have received a gift or hospitality with an estimated value of at least £25;
 - (ix) any land in your authority's area in which you have a beneficial interest;
 - (x) any land where the landlord is your authority and you are, or a firm in which you are a partner, a company of which you are a remunerated director, or a person or body of the description specified in paragraph (vi) is, the tenant;
 - (xi) any land in the authority's area for which you have a licence (alone or jointly with others) to occupy for 28 days or longer; or
 - (b) a decision in relation to that business might reasonably be regarded as affecting your well-being or financial position or the well-being or financial position of a relevant person to a greater extent than the majority of—
 - (i) (in the case of authorities with electoral divisions or wards) other council tax payers, ratepayers or inhabitants of the electoral division or ward, as the case may be, affected by the decision; or
 - (ii) (in all other cases) other council tax payers, ratepayers or inhabitants of your authority's area.
- (2) In sub-paragraph (1)(b), a relevant person is—
- (a) a member of your family or any person with whom you have a close association; or
 - (b) any person or body who employs or has appointed such persons, any firm in which they are a partner, or any company of which they are directors;

- (c) any person or body in whom such persons have a beneficial interest in a class of securities exceeding the nominal value of £25,000; or
- (d) any body of a type described in sub-paragraph (1)(a)(i) or (ii).

Disclosure of personal interests

9.—(1) Subject to sub-paragraphs (2) to (5), where you have a personal interest in any business of your authority and you attend a meeting of your authority at which the business is considered, you must disclose to that meeting the existence and nature of that interest at the commencement of that consideration, or when the interest becomes apparent.

(2) Where you have a personal interest in any business of your authority which relates to or is likely to affect a person described in paragraph 8(1)(a)(i) or 8(1)(a)(ii)(aa), you need only disclose to the meeting the existence and nature of that interest when you address the meeting on that business.

(3) Where you have a personal interest in any business of the authority of the type mentioned in paragraph 8(1)(a)(viii), you need not disclose the nature or existence of that interest to the meeting if the interest was registered more than three years before the date of the meeting.

(4) Sub-paragraph (1) only applies where you are aware or ought reasonably to be aware of the existence of the personal interest.

(5) Where you have a personal interest but, by virtue of paragraph 14, sensitive information relating to it is not registered in your authority's register of members' interests, you must indicate to the meeting that you have a personal interest, but need not disclose the sensitive information to the meeting.

Prejudicial interest generally

10.—(1) Subject to sub-paragraph (2), where you have a personal interest in any business of your authority you also have a prejudicial interest in that business where the interest is one which a member of the public with knowledge of the relevant facts would reasonably regard as so significant that it is likely to prejudice your judgement of the public interest.

(2) You do not have a prejudicial interest in any business of the authority where that business—

- (a) does not affect your financial position or the financial position of a person or body described in paragraph 8;
- (b) does not relate to the determining of any approval, consent, licence, permission or registration in relation to you or any person or body described in paragraph 8; or
- (c) relates to the functions of your authority in respect of—
 - (i) this sub-paragraph does not apply to your authority;
 - (ii) this sub-paragraph does not apply to your authority;
 - (iii) statutory sick pay under Part XI of the Social Security Contributions and Benefits Act 1992, where you are in receipt of, or are entitled to the receipt of, such pay;
 - (iv) an allowance, payment or indemnity given to members;
 - (v) any ceremonial honour given to members; and
 - (vi) setting council tax or a precept under the Local Government Finance Act 1992.

11. Paragraph 11 does not apply to your authority.

Effect of prejudicial interests on participation

12.—(1) Subject to sub-paragraph (2), where you have a prejudicial interest in any business of your authority—

(a) you must withdraw from the room or chamber where a meeting considering the business is being held—

(i) in a case where sub-paragraph (2) applies, immediately after making representations, answering questions or giving evidence;

(ii) in any other case, whenever it becomes apparent that the business is being considered at that meeting;

unless you have obtained a dispensation from your authority's standards committee; and

(b) you must not seek improperly to influence a decision about that business.

(2) Where you have a prejudicial interest in any business of your authority, you may attend a meeting but only for the purpose of making representations, answering questions or giving evidence relating to the business, provided that the public are also allowed to attend the meeting for the same purpose, whether under a statutory right or otherwise.

Part 3

Registration of Members' Interests

Registration of members' interests

13.—(1) Subject to paragraph 14, you must, within 28 days of—

(a) this Code being adopted by or applied to your authority; or

(b) your election or appointment to office (where that is later),

register in your authority's register of members' interests (maintained under section 81(1) of the Local Government Act 2000) details of your personal interests where they fall within a category mentioned in paragraph 8(1)(a), by providing written notification to your authority's monitoring officer.

(2) Subject to paragraph 14, you must, within 28 days of becoming aware of any new personal interest or change to any personal interest registered under paragraph (1), register details of that new personal interest or change by providing written notification to your authority's monitoring officer.

Sensitive information

14.—(1) Where you consider that the information relating to any of your personal interests is sensitive information, and your authority's monitoring officer agrees, you need not include that information when registering that interest, or, as the case may be, a change to that interest under paragraph 13.

(2) You must, within 28 days of becoming aware of any change of circumstances which means that information excluded under paragraph (1) is no longer sensitive information, notify your authority's monitoring officer asking that the information be included in your authority's register of members' interests.

(3) In this Code, "sensitive information" means information whose availability for inspection by the public creates, or is likely to create, a serious risk that you or a person who lives with you may be subjected to violence or intimidation.

DECLARATION OF ACCEPTANCE OF OFFICE

I MAURICE FANAGAN having been elected/co-opted to

the office of MEMBER of

DILTON MARSH District/Town/Parish Council declare that I take that office upon myself and will duly and faithfully fulfil the duties of it according to the best of my judgement and ability.

I undertake to observe the code as to the conduct which is expected of members of

DILTON MARSH District/Town/Parish Council

Signed

Maurice Fanagan

Date

16/10/08

This Declaration was made and signed before me

Signed

Proper Officer of the Council

1. Record of interview conducted by Marie Lindsay with the complainant Mr Edward Whiting.

A2.1

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

39

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

11. Mr Whiting submitted his complaint following an initial enquiry to Wiltshire Council to find out whether Councillor Flanagan had declared an interest in no.69 The High Street. He was advised that enquiries made with the Clerk to Dilton Marsh Parish Council showed that Councillor Flanagan had not submitted a Register of Members' Interests form. Mr Whiting is aware that this contact with the Clerk will have acted as a prompt to Councillor Flanagan to submit his Register of Members' Interest form which he may otherwise not have done.

16th December 2009

This is a note of the interview conducted by Mrs Marie Lindsay with Mr Edward

40

Whiting at his home address at 3.30pm on Wednesday 16th December 2009.

I confirm that I have reviewed this record and made and initialled any alterations I think are necessary and identified any errors I believe are in the record. Subject to any initialled amendments I confirm that this represents a true record of the interview.

Signed.....
Dated.....5.11.09.....

41

[REDACTED]

4/01/10

Dear M/s Lindsay

I would like to make the following comments in response to the allegations by Mr Edward Whiting

1. Re Declaration of Interest:

I filled in my declaration of interest and sent it in to the council. I have not been informed that the council did not receive this. Thus, it should have been available for Mr Whiting to view at the time of his allegations.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Yours sincerely

Maurice Flanagan

A2.3

1. Record of interview conducted by Marie Lindsay with Councillor Maurice Flanagan.

2. [REDACTED]

3. [REDACTED]

[REDACTED]

*made MF.

4. Councillor Flanagan confirmed that he was co-opted onto Dilton Marsh Parish Council on 16 October 2008. He was previously a member of the parish council for a period of one term ending in approximately 1998.

5. Councillor Flanagan explained that on the day that he was co-opted onto Dilton Marsh Parish Council he completed the Declaration of Acceptance of Office form. He took the Register of Members' Interests form away with him to complete. He admits that he did not understand the significance of returning the form within 28 days and it was not until he was reminded by the Clerk that he found the form and sent it direct to West Wiltshire District Council. He sent it in March or April 2009 and clearly remembers addressing the envelope. He states that he did declare an interest in 69 The High Street, Dilton Marsh on the form and he had no reason to believe that it had not been received.

6. [REDACTED]

7. [REDACTED]

- [REDACTED]
8. [REDACTED]
9. [REDACTED]
10. [REDACTED]
11. [REDACTED]
12. [REDACTED]
13. [REDACTED]

14th January 2010

This is a note of the interview conducted by Mrs Marie Lindsay with Councillor Maurice Flanagan at his home address at 2.00pm on Thursday 14th January 2010.

I confirm that I have reviewed this record and made and initialled any alterations I think are necessary and identified any errors I believe are in the record. Subject to any initialled amendments I confirm that this represents a true record of the interview.

Signed..... *Marie Lindsay*
Dated..... *22/01/10*

45

A2.4

TELEPHONE/ATTENDANCE NOTE

File: Councillor Flanagan Ref. 38/09 Date 8/2/10

Call From: Maie Lindsay

Call To: Cllr Flanagan

Telephone call to Councillor Flanagan to clarify the following points:

1) Why did he return his register of members' interest form to West Wiltshire District Council and not to the Clerk of Dilton Marsh Parish Council?

Councillor Flanagan replied that as he thought 'time was of the essence' he would send it straight to West Wiltshire. He cannot recall the Clerk implying that he had to return it to him at Dilton Marsh Parish Council.

2) What is Councillor Flanagan's response to the suggestion by the Clerk, upon enquiries after receipt of Mr Whiting's complaint, that Cllr Flanagan had sent his register of members' interests form to Wiltshire Council 'the previous day' (Oct 09)?

Councillor Flanagan replied that this must be a misunderstanding. He has only ever completed and returned one register of members' interests form and this was sent to West Wiltshire District Council in April/May 2009.

M. Lindsay.



Initial Assessment

Complaint regarding the conduct of Councillor Maurice Flanagan – Dilton Marsh Parish Council

1. On 15th October 2009 the Monitoring Officer received a complaint from Mr Edward Whiting regarding the alleged conduct of Councillor Maurice Flanagan, a member of Dilton Marsh Parish Council.
2. The complaint concerns an allegation that Councillor Maurice Flanagan has failed to comply with the statutory requirement to register his interests within 28 days of assuming office as a member of Dilton Marsh Parish Council.
3. ~~_____~~
~~_____~~
~~_____~~
~~_____~~
4. Copies of the complaint and e-mail correspondence to clarify the complaint are attached.
5. The complainant does not specify what paragraphs of the Code of Conduct may have been breached. Based on the text of the complaint and documents providing further and better particulars of the complaint, the complaint could be taken to be that Councillor Flanagan breached the following paragraphs of the Code:
 - a. 13 – (1) Subject to paragraph 14, you must, within 28 days of –
 - a. This Code being adopted by or applied to your authority; or
 - b. Your election or appointment to officer (where that is later),
 Register in your authority's register of members' interests ... details of your personal interests where they fall within a category mentioned in paragraph 8(1)(a) by providing written notification to your authority's monitory officer.

~~_____~~
~~_____~~
~~_____~~
~~_____~~
~~_____~~
~~_____~~

[REDACTED]

7. Preliminary enquiries by the Monitoring Officer have established that:

- b. Councillor Flanagan is a member of Dilton Marsh Parish Council;
- c. Councillor Flanagan has not registered his interests;

[REDACTED]

8. The Assessment Sub-committee is required to take into account the matters set out in the Local Assessment Criteria attached at **Appendix A**

9. The Assessment Sub-Committee is requested to assess whether the complaint, if proven, would represent a breach of the Code of Conduct for Members, and to reach one of the following three decisions:

- a. Refer the complaint to the Monitoring Officer of the authority for investigation or other appropriate action (e.g., mediation or informal resolution)
- b. Refer the complaint to the Standards Board for England
- c. Decide that no further action should be taken in respect of the complaint

Ian Gibbons – Monitoring Officer

Report Author: Nina Wilton, Head of Governance

The following unpublished documents have been relied on in the preparation of this Report: None

A3.3

DECISION NOTICE: REFERRAL FOR INVESTIGATION

Reference WC-38/09

Complaint

On 19 November 2009, the standards committee of this authority considered a complaint from Mr Edward Whiting concerning the alleged conduct of Councillor Maurice Flanagan, a member of Dilton Marsh Parish Council.

The complainant alleges that Councillor Flanagan failed to complete his register of interests, and that the complainant alleges that Councillor Flanagan has a registrable interest in 69 The High Street, Dilton Marsh. [REDACTED]

[REDACTED]

Decision

In accordance with Section 57A(2) of the Local Government Act 2000, as amended, the assessment sub-committee of the standard's committee decided to refer the allegation to the monitoring officer for investigation.

Potential breaches of the Code of Conduct identified

We have identified below the paragraphs of the Code of Conduct which may apply to the alleged conduct:

- (a) 13 – (1) subject to paragraph 14, you must, within 28 days of –
 - a. This Code being adopted by or applied to your authority; or
 - b. Your election or appointment to officer (where that is later),

Register in your authority's register of members' interests.... details of your personal interests where they fall within a category mentioned in paragraph 8(1)(a) by providing written notification to your authority's monitoring officer.

[Redacted]

[Redacted]

This decision notice is sent to the person or persons making the allegation and the member against whom the allegation was made.

What happens now?

- Investigation – Please see the attached guide on the investigations process

Additional Help

If you need additional support in relation to this or future contact with us, please let us know as soon as possible. If you have difficulty reading this notice we can make reasonable adjustments to assist you, in line with the requirements of the Disability Discrimination Act 2000.

We can also help if English is not your first language.

Signed *Jane Bayley* Date *26.11.09*

Chair of the Wiltshire Council Assessment Sub-Committee

7 December 2009

A3.4

Marie Lindsay
Ethical Governance Officer
Wiltshire Council

Your ref: ML
Our ref: IRG/WC 38/09

Dear Mrs Lindsay,

○ **Appointment as Investigating Officer - Complaint against Councillor Flanagan**

I am writing as Monitoring Officer in exercise of the powers available to me under section 82A of the Local Government Act 2000 to appoint you to act on my behalf as the Investigating Officer in respect of allegations by Mr Edward Whiting (the complainant) concerning the alleged conduct of Councillor Maurice Flanagan, a member of Dilton Marsh Parish Council.

Details of the complaint are set out in the enclosed papers, comprising:

1. Report to the Assessment Sub-Committee of Wiltshire Council's Standards Committee dated 19 November 2009
2. Decision Notice: Referral for Investigation
3. File of correspondence to date

○ I would be obliged if you would investigate the complaint in accordance with the statutory framework for dealing with complaints under the Members' Code of Conduct, and guidance issued by the Standards Board for England, in particular the Guidance Note "How to Conduct an Investigation"

As set out in the guidance you should prepare an investigation plan and send this to me for review. I would also like you to report to me on your progress with the investigation at regular intervals to be agreed.

You should aim to complete and present your final report to me within 8 weeks of the date of this letter. Please let me know at the earliest opportunity if you consider that it may not be possible to meet this timescale.

You should maintain confidentiality throughout the investigation in accordance with the Standards Committee (England) Regulations 2008 and the Standards Board's Guidance.

Thank you for undertaking this role.

Yours sincerely



Ian Gibbons
Solicitor to the Council and Monitoring Officer
Direct Line: 01225 713052
Fax Number: 01225 718399
Email: ian.gibbons@wiltshire.gov.uk



INVESTOR IN PEOPLE

Investigation plan

Case No: WC-38/09

Date received by standards committee: 19 November 2009

Date referred to investigator: 7 December 2009

Ref No:

Subject member:	Councillor Maurice Flanagan	Complainant:	Mr Edward Whiting
Authority:	Dilton Marsh Parish Council	Investigator:	Marie Lindsay

Target for monitoring officer's receipt of draft report

Date due: 25 February 2009

Explanation: Investigator on leave 21 December 2009 to 5 January 2010.

Target for issue of draft report

Date due: 4 March 2010

Explanation: To allow Monitoring Officer time to consider draft report

Target for issue of final report

Date due: 22 March 2010

Explanation: To allow time for subject member and complainant to comment on draft report, and for investigator to make any relevant amendments resulting from those comments.

Case analysis

Behaviour alleged

That Councillor Flanagan failed to complete his register of interests.

[REDACTED]

Relevant Code paragraphs

Paragraph 13(1) – you must register your personal interests in your authority's register of members' interests;

[REDACTED]

Issues for determination

Did Cllr Flanagan fail to register his interests within 28 days of assuming office?

Has he subsequently submitted his register of interests?

[REDACTED]

[REDACTED]

Evidence required

Statement from complainant
Statement from Councillor Flanagan

[REDACTED]

Evidence obtained

To add additional analysis, copy and paste the above table.

Other matters

Identify any thoughts/lines of inquiry not outlined in the table and also highlight any problems in the referral process.

Approved by:

Date:

From: Roger Coleman [mailto:roger.p.coleman@btinternet.com]
Sent: 04 November 2009 17:53
To: Browne, Anna
Subject: Re: Register of Members' Interests and Declarations of Acceptance of Office

A3.6

Ms. Browne,

Thank for your e-mail and letter (received today).
I have all the documents that you request but no means of copying them.
I will send you the originals and you are welcome to keep them.
I have no wish to keep this information. I would in any case direct any request from the public to view the information to you. It is not good practice to have more copies of personal information than are strictly necessary and it is my view that only the originals need be held.

The only records I do not hold are these:

██████████	Register of Interests Form.	Sent directly by the councillor to WWDC.
██████████	Register of Interests Form.	Sent directly by the councillor to WWDC.
Maurice Flanagan	Register of Interests Form.	Sent directly by the councillor to Wiltshire Council.

I can confirm that Dilton Marsh Parish Council passed a resolution at the Parish Council meeting held on 20 September 2007 to adopt the Code and for your information the approved minutes of that meeting state:

532/07 The Model Code of Conduct 2007 (Revised).
The Council resolved by a majority to adopt the Model Code of Conduct 2007 including Paragraph 12(2). The Clerk was asked to confirm that existing PC Standing Orders specifically prescribe a 'Public Adjournment'.

The Standards Board of England has a full record of the Parish Councils who have signed up to the Code.

Regards

Roger Coleman
Clerk to Dilton Marsh Parish Council.

----- Original Message -----

From: Browne, Anna
To: roger.p.coleman@btinternet.com
Sent: Friday, October 30, 2009 10:37 AM
Subject: Register of Members' Interests and Declarations of Acceptance of Office

Dear Mr Coleman

Please see the attached letter which I have sent by email in the first instance due to the postal strikes. A hard copy will follow in the post.

Kind regards

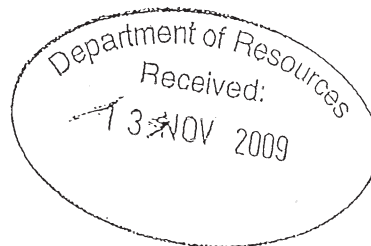
Anna Browne
Governance Support Officer
Wiltshire Council
Tel: 01225 718454

DITTON MARSH
Parish Council

Clerk to the Council: Mr Roger Coleman
2 The Laurels, Westwood, Wiltshire BA15 2AX
Phone/Fax: 01225 862770
Roger.P.Coleman@btinternet.com

A3.7

Wiltshire Council
Department of Resources
Bythesea Road
TROWBRIDGE
Wiltshire
BA14 8JN



10 November 2009

For the attention of Anna Browne.

Dear Ms. Browne,

Register of Members' Interests and Declarations of Acceptance of Office.

I have enclosed the original of the forms that were in my possession – as agreed (via e-mail exchange).

I am informed that those forms that are missing from this pack have been sent to you, or your predecessor in West Wiltshire District Council, directly.

I have attached a list showing you the councillor and the status of the submitted forms. In addition to my e-mail to you (also attached) I do not have the Register of Interests Form for Councillor [REDACTED]

Yours sincerely,

A handwritten signature in cursive script that reads "Coleman".

Roger Coleman

Dilton Marsh Parish Council – 10 November 2009.

Councillor

Register of Interests Form

Declaration of Office Form

[REDACTED]

YES
NO
YES
NO
YES
YES
YES
YES
NO
YES
YES
YES
~~NO~~ being sent 17/11/09
YES

YES
YES
YES
YES
YES
YES
YES
YES
YES
YES
YES
YES
~~NO~~ being sent 17/11
YES

A3.8

26 November 2009

Department of Resources,
Bythesea Road,
Trowbridge,
Wiltshire
BA14 8JN

Mr R Coleman
Clerk to Dilton Marsh Parish Council
2 The Laurels
Westwood
Bradford on Avon
Wiltshire BA15 2AX

Your ref:
Our ref: NWAB83/3/3/7//

Dear Mr Coleman

Re: Register of Members' Interests

Thank you for your recent correspondence enclosing Declarations of Acceptance of Office and Registers of Members' Interests for Dilton Marsh Parish Council.

The Deputy Monitoring Officer is unable to sign the Register of Members' Interests as they date mainly from 2006 and 2007, and it will therefore be necessary to ask councillors to complete one of the following forms:

Register of Members' Interests - Confirmation of Information Previously Given
Register of Interest - Notice of Revision

Alternatively, councillors may wish to complete another Register of Interests form.

I enclose copies of the relevant paperwork (further copies are available on the Wiltshire Council website, under town and parish councils, if you do not have access to copying facilities) and look forward to receiving the completed forms as a matter of urgency.

Yours sincerely

Anna Browne
Governance Support Officer

Direct Line: 01225 718454
Fax Number: 01225 718399
Email: anna.browne@wiltshire.gov.uk

From: Roger Coleman [mailto:roger.p.coleman@btinternet.com]

Sent: 29 November 2009 16:57

To: Browne, Anna

Subject: Dilton Marsh PC - Register of Interests Forms

A3.9

Anna,

I owe you and your colleague (Deputy Monitoring Officer) an apology. I held the firm belief that I remained the custodian of these completed Forms having ensured that councillors completed them and returned them to me within the 28 days from election/appointment. Thereafter, it was my duty at some later stage (period undefined) to forward them to the Monitoring Officer (WWDC as it was). The 'Guidance Note' issued by WWDC at the time of the Council adopting the Code stated:

'The forms should be returned to the clerk, who will check that every question has been answered and then send the form to the Monitoring Officer at WWDC'.

No timescale was indicated. I had assumed that the Register of Interest Form was similar to the Declaration of Office Forms i.e. the Clerk could retain them. Interestingly, in the three or so years after the Parish Council elections WWDC never contacted me regarding the 'missing' forms, even though there have been resignations and subsequent co-options/elections.

I have now obtained and have examined the 'The Local Authorities (Model Code of Conduct) Order 2007 No. 1159, and at Part 3, Para 13 (1)(b) it is quite specific that it is the Monitoring Officer who has to receive this notification and within 28 days. I should have forwarded them to you directly. I didn't. My apologies.

I have prepared a letter to be sent to the relevant Dilton Marsh councillors requesting them to comply with the instruction contained in your recent letter to me (Ref. NWAB83/3/3/3/7 dated 26 November 2009. This will be sent forthwith.....but I do need to know the dates that the councillors concerned signed the original Register of Interests Form. Can you let me have those dates please? I have also explained in the letter that it was my error that has resulted in this action and in the letter I have directed the councillors to return their 'new' form directly to you.

This exchange of correspondence has prompted me to examine the records for the three other Parish Councils for which I am Clerk - Semington, Westwood and Wingfield. I am keen that the position is fully regularised with each Council. I have sent you, under separate cover, the Register of Interests Forms that I possess in respect of these Parish Councillors and would be grateful if you could inform me what action you wish me to take.

Notwithstanding the above, I can confirm that in each case, newly elected or co-opted councillors have been given copies of the Register of Interests Form and the Declaration of Office Form with clear instructions regarding their completion and timescales involved - albeit, misleadingly told by me, that they had to be returned to me within the 28 days. All those returned directly to me complied with the necessary timescale of 28 days.

Again, apologies for this error and thank you for bringing it to my attention.

Regards

Roger Coleman
Clerk to Dilton Marsh Parish Council

This email has been scanned by the MessageLabs Email Security System.
For more information please visit <http://www.messagelabs.com/email>

A3.13

Lindsay, Marie

From: Roger Coleman [roger.p.coleman@btinternet.com]
Sent: 25 January 2010 08:47
To: Lindsay, Marie
Subject: Re: Code of Conduct Complaint

Marie,

When a new councillor is appointed I explain the code of conduct in general terms to them and give them the information sheet prepared by WWDC, a copy of the A4 (orange) publication giving full details of the Code of Conduct, the 'credit card size' summary of the Code and a copy of 'The Good Councillor's Guide (although, occasionally, I have had an insufficient number of these to give out). Additionally, I send out with the Agenda full details of all correspondence received and this included the recent information regarding the Standards Board/Code of Conduct plus CD. There have no attendances on formal Training Courses - although I cannot remember any being advertised or offered.

I hope that helps.

Regards

Roger

----- Original Message -----

From: Lindsay, Marie
To: roger.p.coleman@btinternet.com
Sent: Wednesday, January 20, 2010 3:16 PM
Subject: Code of Conduct Complaint

Dear Roger

I am beginning to put together my report in respect of the complaint that I am currently investigating.

I would be grateful if you could advise me whether members of Dilton Marsh Parish Council have received any training on the Code of Conduct and if so, when.

Kind regards
Marie

Marie Lindsay
Ethical Governance Officer
Wiltshire Council
Bythesea Road
Trowbridge
Wiltshire BA14 8JN

Tel: 01225 718465
Fax: 01225 718399

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2007 No.1159

LOCAL GOVERNMENT, ENGLAND AND WALES

The Local Authorities (Model Code of Conduct) Order 2007

Made - - - - *2nd April 2007*

Laid before Parliament *4th April 2007*

Coming into force - - *3rd May 2007*

The Secretary of State for Communities and Local Government makes the following Order in exercise of the powers conferred by sections 50(1) and (4), 81(2) and (3), and 105(2), (3) and (4) of the Local Government Act 2000(a).

The Secretary of State has consulted in accordance with section 50(5) of that Act.

The Secretary of State is satisfied that this Order is consistent with the principles for the time being specified in an order under section 49(1) of that Act(b).

Citation, commencement and application

1.—(1) This Order may be cited as the Local Authorities (Model Code of Conduct) Order 2007 and comes into force on 3rd May 2007.

(2) This Order applies—

- (a) in relation to police authorities in England and Wales; and
- (b) in relation to the following authorities in England—
 - (i) a county council;
 - (ii) a district council;
 - (iii) a London borough council;
 - (iv) a parish council;
 - (v) the Greater London Authority;
 - (vi) the Metropolitan Police Authority;
 - (vii) the London Fire and Emergency Planning Authority;
 - (viii) the Common Council of the City of London;
 - (ix) the Council of the Isles of Scilly;
 - (x) a fire and rescue authority;
 - (xi) a joint authority;
 - (xii) the Broads Authority; and

(a) 2000 c.22.

(b) See the Relevant Authorities (General Principles) Order 20001 (S.I. 2001/1401).

(xiii) a National Park authority,
and in this Order references to “authority” are construed accordingly.

Model Code of Conduct

2.—(1) The code set out in the Schedule to this Order (“the Code”) has effect as the model code issued by the Secretary of State under section 50 of the Local Government Act 2000 as regards the conduct which is expected of members and co-opted members of an authority.

(2) Subject to paragraphs (3) to (6), every provision of the Code in the Schedule to this Order is mandatory for an authority.

(3) Paragraph 6(c) of the Code is not mandatory for police authorities, the Greater London Authority, the Metropolitan Police Authority, the London Fire and Emergency Planning Authority, fire and rescue authorities and joint authorities.

(4) Paragraph 7 of the Code is not mandatory for parish councils.

(5) Subject to sub-paragraph (6)(c) and (d) below, paragraphs 10(2)(c)(i) and (ii), 11 and 12(2) of the Code are mandatory only for county councils, district councils and London borough councils, the Common Council of the City of London and the Council of the Isles of Scilly.

(6) The following provisions of the Code are mandatory only for an authority which is operating executive arrangements—

- (a) in paragraph 1(4), in the definition of “meeting”—
 - (i) sub-paragraph (b);
 - (ii) in sub-paragraph (c), the words “or its executive’s” and “, or area committees”;
- (b) paragraphs 9(6), 9(7) and 12(1)(b);
- (c) in paragraph 11(a), the words “your authority’s executive or”
- (d) in paragraph 11(b), the word “executive,”; and
- (e) in paragraph 12(2), the words in brackets.

Disapplication of certain statutory provisions

3. The following provisions shall not apply (where they are capable of doing so) to an authority which has adopted a code of conduct or to which such a code applies—

- (a) sections 94 to 98 and 105 to the Local Government Act 1972(a);
- (b) section 30(3A) of the Local Government Act 1974(b);
- (c) regulations made or a code issued under section 19 and 31 of the Local Government and Housing Act 1989(c);
- (d) paragraphs 9 and 10 of Schedule 7 to the Environment Act 1995(d); and
- (e) any guidance issued under section 66 of the Greater London Authority Act 1999(e).

Revocation and savings

4.—(1) Subject to paragraphs (2) and (3), the following orders are revoked—

- (a) the Local Authorities (Model Code of Conduct) (England) Order 2001(f);
- (b) the Parish Councils (Model Code of Conduct) Order 2001(g);

(a) 1972 c.70.

(b) 1974 c.7. Section 30(3A) was inserted by section 32(1) of the Local Government and Housing Act 1989 (c. 42), with effect from 1st April 1990.

(c) 1989 c.42.

(d) 1995 c.25.

(e) 1999 c.29.

(f) S.I. 2001/3575.

(g) S.I. 2001/3576.

- (c) the National Park and Broads Authorities (Model Code of Conduct) (England) Order 2001(a); and
- (d) the Police Authorities (Model Code of Conduct) Order 2001(b).

(2) The Orders referred to in paragraph (1) continue to have effect for the purposes of and for purposes connected with —

- (a) the investigation of any written allegation under Part 3 of the Local Government Act 2000, where that allegation relates to conduct which took place before the date when, pursuant to section 51 of that Act—
 - (i) the authority adopts a code of conduct incorporating the mandatory provisions of the Code in the Schedule to this Order in place of their existing code of conduct;
 - (ii) the authority revises their existing code of conduct to incorporate the mandatory provisions of the Code in the Schedule to this Order; or
 - (iii) the mandatory provisions of the Code in the Schedule to this Order apply to members or co-opted members of the authority under section 51(5)(b) of that Act;
- (b) the adjudication of a matter raised in such an allegation; and
- (c) an appeal against the decision of an interim case tribunal or case tribunal in relation to such an allegation.

(3) Any order made under section 83 of the Local Government Act 1972(c) shall have effect for the purpose of prescribing the form of a declaration of acceptance of office in relation to a county council, district council, London borough council and a parish council.

Signed on behalf of the Secretary of State for Communities and Local Government

Phil Woolas
Minister of State

2nd April 2007

Department for Communities and Local Government

(a) S.I. 2001/3577.

(b) S.I. 2001/3578.

(c) Orders made under section 83 of the Local Government Act 1972 were disapplied, by the Orders mentioned in article 4(1)(a) and (b) of this Order, and are here being revived.

SCHEDULE

THE MODEL CODE OF CONDUCT

Part 1

General provisions

Introduction and interpretation

1.—(1) This Code applies to **you** as a member of an authority.

(2) You should read this Code together with the general principles prescribed by the Secretary of State^(a).

(3) It is your responsibility to comply with the provisions of this Code.

(4) In this Code—

“meeting” means any meeting of—

(a) the authority;

(b) the executive of the authority;

(c) any of the authority’s or its executive’s committees, sub-committees, joint committees, joint sub-committees, or area committees;

“member” includes a co-opted member and an appointed member.

(5) In relation to a parish council, references to an authority’s monitoring officer and an authority’s standards committee shall be read, respectively, as references to the monitoring officer and the standards committee of the district council or unitary county council which has functions in relation to the parish council for which it is responsible under section 55(12) of the Local Government Act 2000.

Scope

2.—(1) Subject to sub-paragraphs (2) to (5), you must comply with this Code whenever you—

(a) conduct the business of your authority (which, in this Code, includes the business of the office to which you are elected or appointed); or

(b) act, claim to act or give the impression you are acting as a representative of your authority,

and references to your official capacity are construed accordingly.

(2) Subject to sub-paragraphs (3) and (4), this Code does not have effect in relation to your conduct other than where it is in your official capacity.

(3) In addition to having effect in relation to conduct in your official capacity, paragraphs 3(2)(c), 5 and 6(a) also have effect, at any other time, where that conduct constitutes a criminal offence for which you have been convicted.

(4) Conduct to which this Code applies (whether that is conduct in your official capacity or conduct mentioned in sub-paragraph (3)) includes a criminal offence for which you are convicted (including an offence you committed before the date you took office, but for which you are convicted after that date).

(5) Where you act as a representative of your authority—

(a) See the Relevant Authorities (General Principles) Order 2001 (S.I. 2001/1401).

- (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.

General obligations

3.—(1) You must treat others with respect.

(2) You must not—

- (a) do anything which may cause your authority to breach any of the equality enactments (as defined in section 33 of the Equality Act 2006^(a));
- (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; or
- (d) do anything which compromises or is likely to compromise the impartiality of those who work for, or on behalf of, your authority.

(3) In relation to police authorities and the Metropolitan Police Authority, for the purposes of sub-paragraph (2)(d) those who work for, or on behalf of, an authority are deemed to include a police officer.

4. You must not—

- (a) disclose information given to you in confidence by anyone, or information acquired by you which you believe, or ought reasonably to be aware, is of a confidential nature, except where—
 - (i) you have the consent of a person authorised to give it;
 - (ii) you are required by law to do so;
 - (iii) the disclosure is made to a third party for the purpose of obtaining professional advice provided that the third party agrees not to disclose the information to any other person; or
 - (iv) the disclosure is—
 - (aa) reasonable and in the public interest; and
 - (bb) made in good faith and in compliance with the reasonable requirements of the authority; or
- (b) prevent another person from gaining access to information to which that person is entitled by law.

5. You must not conduct yourself in a manner which could reasonably be regarded as bringing your office or authority into disrepute.

6. You—

- (a) 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
- (b) must, when using or authorising the use by others of the resources of your authority—

(a) 2006 c.3.

- (i) act in accordance with your authority's reasonable requirements;
- (ii) ensure that such resources are not used improperly for political purposes (including party political purposes); and
- (c) must have regard to any applicable Local Authority Code of Publicity made under the Local Government Act 1986^(a).

7.—(1) When reaching decisions on any matter you must have regard to any relevant advice provided to you by—

- (a) your authority's chief finance officer; or
- (b) your authority's monitoring officer,

where that officer is acting pursuant to his or her statutory duties.

(2) You must give reasons for all decisions in accordance with any statutory requirements and any reasonable additional requirements imposed by your authority.

Part 2

Interests

Personal interests

8.—(1) You have a personal interest in any business of your authority where either—

- (a) it relates to or is likely to affect—
 - (i) any body of which you are a member or in a position of general control or management and to which you are appointed or nominated by your authority;
 - (ii) any body—
 - (aa) exercising functions of a public nature;
 - (bb) directed to charitable purposes; or
 - (cc) one of whose principal purposes includes the influence of public opinion or policy (including any political party or trade union), of which you are a member or in a position of general control or management;
 - (iii) any employment or business carried on by you;
 - (iv) any person or body who employs or has appointed you;
 - (v) any person or body, other than a relevant authority, who has made a payment to you in respect of your election or any expenses incurred by you in carrying out your duties;
 - (vi) any person or body who has a place of business or land in your authority's area, and in whom you have a beneficial interest in a class of securities of that person or body that exceeds the nominal value of £25,000 or one hundredth of the total issued share capital (whichever is the lower);
 - (vii) any contract for goods, services or works made between your authority and you or a firm in which you are a partner, a company of which you are a remunerated director, or a person or body of the description specified in paragraph (vi);
 - (viii) the interests of any person from whom you have received a gift or hospitality with an estimated value of at least £25;
 - (ix) any land in your authority's area in which you have a beneficial interest;

^(a) 1986 c.10.

- (x) any land where the landlord is your authority and you are, or a firm in which you are a partner, a company of which you are a remunerated director, or a person or body of the description specified in paragraph (vi) is, the tenant;
- (xi) any land in the authority's area for which you have a licence (alone or jointly with others) to occupy for 28 days or longer; or
- (b) a decision in relation to that business might reasonably be regarded as affecting your well-being or financial position or the well-being or financial position of a relevant person to a greater extent than the majority of—
 - (i) (in the case of authorities with electoral divisions or wards) other council tax payers, ratepayers or inhabitants of the electoral division or ward, as the case may be, affected by the decision;
 - (ii) (in the case of the Greater London Authority) other council tax payers, ratepayers or inhabitants of the Assembly constituency affected by the decision; or
 - (iii) (in all other cases) other council tax payers, ratepayers or inhabitants of your authority's area.
- (2) In sub-paragraph (1)(b), a relevant person is—
 - (a) a member of your family or any person with whom you have a close association; or
 - (b) any person or body who employs or has appointed such persons, any firm in which they are a partner, or any company of which they are directors;
 - (c) any person or body in whom such persons have a beneficial interest in a class of securities exceeding the nominal value of £25,000; or
 - (d) any body of a type described in sub-paragraph (1)(a)(i) or (ii).

Disclosure of personal interests

9.—(1) Subject to sub-paragraphs (2) to (7), where you have a personal interest in any business of your authority and you attend a meeting of your authority at which the business is considered, you must disclose to that meeting the existence and nature of that interest at the commencement of that consideration, or when the interest becomes apparent.

(2) Where you have a personal interest in any business of your authority which relates to or is likely to affect a person described in paragraph 8(1)(a)(i) or 8(1)(a)(ii)(aa), you need only disclose to the meeting the existence and nature of that interest when you address the meeting on that business.

(3) Where you have a personal interest in any business of the authority of the type mentioned in paragraph 8(1)(a)(viii), you need not disclose the nature or existence of that interest to the meeting if the interest was registered more than three years before the date of the meeting.

(4) Sub-paragraph (1) only applies where you are aware or ought reasonably to be aware of the existence of the personal interest.

(5) Where you have a personal interest but, by virtue of paragraph 14, sensitive information relating to it is not registered in your authority's register of members' interests, you must indicate to the meeting that you have a personal interest, but need not disclose the sensitive information to the meeting.

(6) Subject to paragraph 12(1)(b), where you have a personal interest in any business of your authority and you have made an executive decision in relation to that business, you must ensure that any written statement of that decision records the existence and nature of that interest.

(7) In this paragraph, "executive decision" is to be construed in accordance with any regulations made by the Secretary of State under section 22 of the Local Government Act 2000(a).

(a) See the Local Authorities (Executive Arrangements) (Access to Information) (England) Regulations (S.I.2000/3272).

Prejudicial interest generally

10.—(1) Subject to sub-paragraph (2), where you have a personal interest in any business of your authority you also have a prejudicial interest in that business where the interest is one which a member of the public with knowledge of the relevant facts would reasonably regard as so significant that it is likely to prejudice your judgement of the public interest.

- (2) You do not have a prejudicial interest in any business of the authority where that business—
- (a) does not affect your financial position or the financial position of a person or body described in paragraph 8;
 - (b) does not relate to the determining of any approval, consent, licence, permission or registration in relation to you or any person or body described in paragraph 8; or
 - (c) relates to the functions of your authority in respect of—
 - (i) housing, where you are a tenant of your authority provided that those functions do not relate particularly to your tenancy or lease;
 - (ii) school meals or school transport and travelling expenses, where you are a parent or guardian of a child in full time education, or are a parent governor of a school, unless it relates particularly to the school which the child attends;
 - (iii) statutory sick pay under Part XI of the Social Security Contributions and Benefits Act 1992, where you are in receipt of, or are entitled to the receipt of, such pay;
 - (iv) an allowance, payment or indemnity given to members;
 - (v) any ceremonial honour given to members; and
 - (vi) setting council tax or a precept under the Local Government Finance Act 1992.

Prejudicial interests arising in relation to overview and scrutiny committees

11. You also have a prejudicial interest in any business before an overview and scrutiny committee of your authority (or of a sub-committee of such a committee) where—

- (a) that business relates to a decision made (whether implemented or not) or action taken by your authority's executive or another of your authority's committees, sub-committees, joint committees or joint sub-committees; and
- (b) at the time the decision was made or action was taken, you were a member of the executive, committee, sub-committee, joint committee or joint sub-committee mentioned in paragraph (a) and you were present when that decision was made or action was taken.

Effect of prejudicial interests on participation

12.—(1) Subject to sub-paragraph (2), where you have a prejudicial interest in any business of your authority—

- (a) you must withdraw from the room or chamber where a meeting considering the business is being held—
 - (i) in a case where sub-paragraph (2) applies, immediately after making representations, answering questions or giving evidence;
 - (ii) in any other case, whenever it becomes apparent that the business is being considered at that meeting;unless you have obtained a dispensation from your authority's standards committee;
- (b) you must not exercise executive functions in relation to that business; and
- (c) you must not seek improperly to influence a decision about that business.

(2) Where you have a prejudicial interest in any business of your authority, you may attend a meeting (including a meeting of the overview and scrutiny committee of your authority or of a sub-committee of such a committee) but only for the purpose of making representations,

answering questions or giving evidence relating to the business, provided that the public are also allowed to attend the meeting for the same purpose, whether under a statutory right or otherwise.

Part 3

Registration of Members' Interests

Registration of members' interests

13.—(1) Subject to paragraph 14, you must, within 28 days of—

- (a) this Code being adopted by or applied to your authority; or
- (b) your election or appointment to office (where that is later),

register in your authority's register of members' interests (maintained under section 81(1) of the Local Government Act 2000) details of your personal interests where they fall within a category mentioned in paragraph 8(1)(a), by providing written notification to your authority's monitoring officer.

(2) Subject to paragraph 14, you must, within 28 days of becoming aware of any new personal interest or change to any personal interest registered under paragraph (1), register details of that new personal interest or change by providing written notification to your authority's monitoring officer.

Sensitive information

14.—(1) Where you consider that the information relating to any of your personal interests is sensitive information, and your authority's monitoring officer agrees, you need not include that information when registering that interest, or, as the case may be, a change to that interest under paragraph 13.

(2) You must, within 28 days of becoming aware of any change of circumstances which means that information excluded under paragraph (1) is no longer sensitive information, notify your authority's monitoring officer asking that the information be included in your authority's register of members' interests.

(3) In this Code, "sensitive information" means information whose availability for inspection by the public creates, or is likely to create, a serious risk that you or a person who lives with you may be subjected to violence or intimidation.

EXPLANATORY NOTE

(This note is not part of the Order)

The Order contains a model code of conduct as regards the conduct which is expected of members and co-opted members of relevant authorities in England and police authorities in England and Wales. The Secretary of State has power to issue such a code under section 50 of the Local Government Act 2000. Under section 51 of that Act, each authority must adopt a code of conduct applying to its members and co-opted members which must incorporate any mandatory provisions of the Code. Under section 51(5), where an authority does not adopt such a code within six months of the Order coming into force, the mandatory provisions of the Code will apply to the members of the authority until it adopts its own code.

Article 1 provides that this Order applies to specified authorities in England and police authorities in England and Wales.

Article 2 provides that a model code is set out in the Schedule to the Order, and states which of its provisions are mandatory.

Article 3 disapplies the statutory provisions relating to the National Code of Local Government Conduct and members' interests.

Article 4 revokes—

the Local Authorities (Model Code of Conduct) (England) Order 2001(a);

the Parish Councils (Model Code of Conduct) Order 2001(b);

the National Park and Broads Authorities (Model Code of Conduct) (England) Order 2001(c);
and

the Police Authorities (Model Code of Conduct) Order 2001(d).

These Orders continue to have effect in relation to misconduct committed before the date when the new code is adopted or applied to an authority.

Article 4(3) provides that orders made under section 83 of the Local Government Act 1972 shall have effect for the purpose of prescribing the form of a declaration of acceptance of office.

In the **Schedule to the Order**—

Paragraph 1 of the Code provides that the Code applies to any member of an authority and that it is the responsibility of each member to comply with the Code.

Paragraph 2 of the Code provides that the Code applies whenever a member is acting in his or her official capacity, and in relation to conduct in a member's private capacity the code only applies where such conduct has resulted in a criminal conviction. Additionally, where a member is acting as a representative of his or her authority, he or she must continue to observe the authority's code, unless he or she is subject to another relevant authority's code, or unless (in relation to any other body) it conflicts with any other legal obligations.

Paragraph 3 of the Code provides that members must treat others with respect and not do anything which may cause their authority to breach equality legislation, or which compromises the impartiality of those who work for the authority or bully anyone or intimate persons involved in code of conduct cases.

(a) S.I. 2001/3575.
(b) S.I. 2001/3576.
(c) S.I. 2001/3577.
(d) S.I. 2001/3578.

Paragraph 4 of the Code provides that members must not without consent disclose confidential information they have acquired and must not prevent others from gaining access to information to which they are entitled.

Paragraph 5 of the Code provides that a member must not conduct himself or herself in a manner which could bring his or her authority into disrepute.

Paragraph 6 of the Code provides that a member must not use his or her position improperly to gain an advantage or confer a disadvantage and that when using or authorising the use of the authority's resources, he or she must act in accordance with the authority's reasonable requirements, must not permit those resources to be used for political purposes and must have regard to the Local Authority Code of Publicity.

Paragraph 7 of the Code provides that a member must have regard to advice given by the chief finance officer and monitoring officer and must give reasons for decisions made.

Paragraph 8 of the Code provides a list of matters which constitute a personal interest.

Paragraph 9 of the Code provides that generally a member with a personal interest in any business of his or her authority must disclose that interest at any meeting at which the business is considered.

Paragraph 10 of the Code provides that generally a member with a personal interest also has a prejudicial interest if the interest could be regarded by a member of the public as so significant that it is likely to prejudice his or her judgement of the public interest. The paragraph provides that in specified circumstances a member may regard himself as not having a prejudicial interest.

Paragraph 11 of the Code provides that a member who was involved in making a decision or taking action on a matter must not be involved in the overview and scrutiny committee's consideration of that decision or action.

Paragraph 12 of the Code provides that a member with a prejudicial interest must, unless, for example, he or she is making representations and members of the public are also allowed to make representations on that matter, or he or she has obtained a dispensation, withdraw from any meetings at which the business is being considered, and must not improperly influence decisions in relation to the business.

Paragraph 13 of the Code provides that a member must notify the monitoring officer of his or her personal interests and any change to those interests must also be notified.

Paragraph 14 of the Code provides that a member may notify the monitoring officer of any sensitive information the availability of which to the public creates, or is likely to create, a serious risk that the member or a person who lives with him or her may be subjected to violence or intimidation.

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Wiltshire Council

Standards Hearing Sub-Committee: 9.30am - 5 July 2010
Committee Room 3, County Hall, Bythesea Road, Trowbridge, BA14 8JN

Pre-Hearing Process Summary

Authority	Dilton Marsh Parish Council
Subject Member	Councillor Maurice Flanagan
Complainant	Mr Edward Whiting
Case reference number	WC 38/09
Chairman of the Standards Committee hearing	Mr Gerry Robson OBE - independent member Other members: Cllr M. Hewson - elected member Wiltshire Council Mr. P. Neale - town and parish council representative
Monitoring Officer / Legal Adviser to the Standards Hearing Sub-Committee	Mr Ian Gibbons
Clerk of the hearing	Mr Liam Paul
Investigator	Mrs Marie Lindsay
Date the pre-hearing summary was produced	21 June 2010
Summary of the complaint	It is alleged that Councillor Flanagan has failed to comply with the statutory requirement to register his interests within 28 days of assuming office as a member of Dilton Marsh Parish Council, thereby failing to disclose a registrable interest in 69 The High Street, Dilton Marsh.
Relevant sections of the Code of Conduct	13(1) - You must, within 28 days of your appointment to office register in your authority's register of members' interests... details of your personal interests where they fall within a category mentioned in paragraph 8(1)(a) by

	providing written notification to your authority's monitoring officer.
Date, time and place of the hearing	9.30am, Monday 5 July 2010 Committee Room 3, County Hall, Bythesea Road, Trowbridge, BA14 8JN
Findings of fact in the investigation report that are agreed	Please see Form A, completed by the subject member.
Findings of fact in the investigation report that are not agreed	Please see form A.
Does the subject member disagree with any findings of the investigation report, including reasons for any of these disagreements?	Please see form A.
Does the subject member wish to give evidence to the standards committee, either orally or in writing?	Yes he will be attending to give evidence.
Does the subject member wish to be represented at the hearing by a solicitor, barrister or any other person?	He wishes to be represented by Mr F Morland.
Does the subject member want to call relevant witnesses to give evidence to the standards committee?	Councillor Flanagan wishes to call Mrs Alison Irving as a character witness. The Sub-Committee is happy for her to attend the hearing, but will accept a written statement if she is unable to attend.
Does the subject member want any of the hearing to be held in private?	The Sub-Committee agreed that the matters relating to those allegations in the complaint that were dismissed by the Consideration Sub-Committee are not relevant for these purposes and will not form part of the hearing. The investigator's report will, therefore, remain confidential and the Monitoring Officer will arrange for an extract of the investigator's report relating only to the matter before them to be prepared for use at the hearing. A copy will be sent to the subject member in advance of the hearing. On this basis the Sub-Committee is minded to hear the matter in public.
Does the subject member want any part of the investigation report or other relevant documents to be withheld from the public?	
Will the Investigator be	Yes.

attending the hearing?	
Proposed procedure for the hearing	Procedure for Determination of Referred Complaints by the Standards Committee (Protocol III – Wiltshire Council Constitution). A copy has been circulated to the subject member.

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Code of Conduct Complaint: Councillor Flanagan

FORM A Please enter the number of any paragraph where you disagree with the findings of fact in the investigator's report and give your reasons and your suggested alternative.

Member's response to the evidence set out in the investigator's report

Paragraph number from the investigator's report	Reasons for disagreeing with the findings of fact provided in that paragraph	Suggestion as to how the paragraph should read
6.9.	This conflicts with 6.10 16.12	The Previous Day - should be struck out
6.13	No evidence as to which forms transferred or that all transferred	6.13 struck out as no evidence for either comment
6.14.	The correct mechanism is that councillors should send registered interest direct to Monitoring officer	Mr Flanagan correctly sent his form to the Monitoring officer direct.
6.15	No evidence that Mr Flanagan's form not received by Wiltshire Council	Councillor Flanagan and the majority of Dilton Marsh Parish council members interest forms are not available or on record with Wiltshire Council at this time

Please attach separate sheets if necessary.

FORM A

Please enter the number of any paragraph where you disagree with the findings of fact in the investigator's report and give your reasons and your suggested alternative.

cent

Member's response to the evidence set out in the investigator's report

Paragraph number from the investigator's report	Reasons for disagreeing with the findings of fact provided in that paragraph	Suggestion as to how the paragraph should read
6.16	No evidence that form was not received by WWDC. Also duplicates previous statements	Strike out sentence starting 'however'
8.5	repeats earlier statements and is irrelevant as is part of allegation of late submission	Strike out paragraph

Please attach separate sheets if necessary.

Protocol III

REVISED PROCEDURE

PROCEDURE FOR DETERMINATION OF REFERRED COMPLAINTS BY THE STANDARDS COMMITTEE

Introduction

Under the provisions of the Local Government Act 2000, as amended by the Local Government and Public Involvement in Health Act 2007, standards committees may require monitoring officers to conduct investigations into allegations that a member of a relevant council has failed to comply with the code of conduct. The Standards Committee (England) Regulations 2008 (the Regulations) provide a framework for the operation of a locally based system for the assessment, referral, investigation and hearing of complaints of member misconduct. The purpose of this procedure is to set out in detail how the findings of investigations will be heard by the Standards Committee.

1 Interpretation

1.1 'Member' means the elected or co-opted member of the council or an elected or co-opted member of a town or parish council within the council's area who is the subject of the allegation being considered by the Standards Committee, unless stated otherwise. It also includes the member's nominated representative.

1.2 'Investigator' means the person appointed by the monitoring officer to undertake an investigation of an allegation of misconduct. This may include the monitoring officer, and his or her nominated representative.

1.3 'Committee' means a sub-committee of the Standards Committee appointed to discharge the functions of the Standards Committee in relation to the consideration of reports referred by the monitoring officer (Paragraph 17 of the Regulations) and to the hearing of complaints against members (Paragraphs 18 to 20 of the Regulations).

1.4 'Legal Adviser' means the officer responsible for providing legal advice to the Standards Committee. This will usually be the monitoring officer, unless he/she has a conflict of interest in which case another legally qualified officer of the Council, or someone appointed for this purpose from outside the Council, who is also legally qualified.

1.5 'Chairman' means the member appointed as chairman of the committee, who shall be an independent member as defined in the Regulations.

1.6 'Clerk' means the clerk to the Standards Committee

Right to Representation

The member may be represented or accompanied during the meeting by a solicitor, by counsel, or (with the permission of the Committee) by any other person. It should be noted that the costs of such representation must be met by the Member.

3 Legal Advice

The Committee may take legal advice from its Legal Adviser at any time during the hearing or while it is considering the outcome. The substance of any legal advice given to the

Committee should be shared with the member and the investigator if they are present at the hearing.

4 Timescale

A hearing must be held within three months of receipt of the investigator's report by the monitoring officer. However, all hearings will be arranged in the shortest timescale possible and no later than three months. The hearing should not be held until at least fourteen days after the date on which the monitoring officer sent the report to the member, unless the member concerned agrees to the hearing being held earlier.

5 Consideration of reports by the Standards Committee

Where the monitoring officer refers a report to the Standards Committee the committee shall convene to consider that report and make one of the following findings—

- (a) that it accepts the investigating officer's finding of no failure ("a finding of acceptance"); or
- (b) that the matter should be considered at a hearing of the Standards Committee conducted under paragraph 18 of the Regulations; or
- (c) that the matter should be referred to the Adjudication Panel for England for determination.

The committee may only make a finding under sub-paragraph 5 (c) if—

- (a) it has determined that the action it could take against the member would be insufficient were a finding of failure to be made; and
- (b) the president or deputy president of the adjudication panel has agreed to accept the referral.

6 Pre-Hearing

6.1 The following pre-hearing process to deal with procedural matters will normally be carried out in writing, although exceptionally, a face-to-face meeting between the chairman, the member, the legal adviser and the investigator and their representatives may be necessary.

6.2 As soon as reasonably practicable, and in any event within three working days after receiving a copy of the investigator's report from the Investigator, the monitoring officer shall send a copy of the investigator's report to the member, by special delivery or by hand. The member shall be requested to acknowledge receipt of the report immediately by telephone or e-mail. A copy will also be sent to the complainant.

6.3 The ethical governance officer, in consultation with the chairman, will write to the member, enclosing a copy of this procedure, to propose a date for the hearing and to explain the member's rights. They will ask for a written response from the member, within 10 working days, to find out whether or not he or she:

- disagrees with any of the findings of fact in the investigator's report, and if so, which ones and the reasons for any disagreements;
- wants to be represented at the hearing by a solicitor, barrister or any other person (the latter will require the express permission of the committee which is not to be unreasonably withheld);
- wants to give evidence to the committee, either orally or in writing;
- wants to call relevant witnesses to give evidence or submit written evidence on any disagreements as to the findings of fact or mitigation to the committee;

- wants any part of the hearing to be held in private;
- wants any part of the investigator's report or other relevant documents to be withheld from the public; and the reason why
- can come to the hearing.

NOTE: The member is encouraged to use the forms attached to this part of the procedure to identify any findings of fact that he or she disagrees with (Form A) and outline any further evidence that he or she believes the Committee should consider (Form B).

The member is encouraged to give advance consideration to any representations to be taken into account if he or she is found to have failed to follow the code of conduct (Form C).

The member will be asked to give information about his or her requirements for representation and witness attendance at the hearing (Forms D and E).

NOTE: The complainant will be notified of the proposed date, location of the hearing and procedure at the same time as the member.

6.4 The ethical governance officer will ask the investigator to comment on the member's response, within 10 working days from the date of receipt, to say whether or not he or she:

- wants to be represented at any hearing (and if so to indicate their availability to attend);
- wants to call relevant witnesses to give evidence to the Committee;
- wants any part of the hearing to be held in private; and
- wants any part of the Investigator's Report or other relevant documents to be withheld from the public.

6.5 For the avoidance of doubt, should the member and/or the Investigator fail to respond within the time set for a response they will, for the purpose of this procedure, be deemed to have no objection to the findings of fact or the member's response as the case may be.

The committee will meet within 10 working days to consider any responses from the member concerned and the investigator, and to decide whether any other witnesses should be present who it feels may help in determining the case, including the person who made the original allegation. However, no witnesses can be ordered to appear or give evidence. The committee should resolve any issues raised during the pre-hearing process about how the hearing should be conducted.

NOTE: The ethical governance officer will produce a pre-hearing process summary to include information listed in Form F and will include this with the letter to everyone involved.

6.6 When the committee has considered any responses as set out above, the ethical governance officer, in consultation with the legal adviser, will write to everyone involved within five working days of the pre-hearing and at least 10 working days before the hearing, to:

- confirm the date, time and place for the hearing
- summarise the allegation;
- outline the main facts of the case that are agreed;
- outline the main facts which are not agreed;

- state whether the member or the Investigator will attend or be represented at the hearing;
- list those witnesses, if any, who will be asked to give evidence; and
- outline the proposed procedure for the hearing

7 Procedure for the Hearing – Setting the Scene

7.1 After the members of the committee and everyone involved have been formally introduced, the chairman will explain how the committee is going to run the hearing.

7.2 The chairman shall ask members of the committee to disclose the existence and nature of any personal or prejudicial interests which they have in the matter, and to withdraw from consideration of the matter if so required.

7.3 The committee may exclude the press and public from its consideration of this matter, where it appears likely that confidential or exempt information will be disclosed.

The chairman shall ask the member, the investigator and the legal adviser whether they wish to ask the committee to exclude the press or public from all or any part of the hearing. If any of them so request, the chairman shall ask them to put forward reasons for so doing and ask for responses from the other parties present and the committee shall then determine whether to exclude the press and public from all or any part of the hearing.

Where the committee does not resolve to exclude the press and public, the agenda and any documents which have been withheld in advance of the meeting shall then be made available to the press and public.

8. Absence of the member

If the member is not present at the time and place fixed for the hearing and the committee is satisfied that s/he has been given notice of the hearing, the committee may, unless it is satisfied that there is sufficient reason for the member's absence, consider the allegation and make a determination in the absence of the member concerned or adjourn the hearing to another date.

9. Making findings of fact

9.1 After dealing with any preliminary issues, the committee will move on to consider whether or not there are any significant disagreements about the facts contained in the Investigator's report or other pre hearing papers circulated with the agenda.

9.2 If there is no disagreement about the facts, the committee will move on to the next stage of the hearing set out at section 10 below.

9.3 If there is a disagreement, the investigator, if present, will be invited to make any representations to support the relevant findings of fact in the report. With the committee's permission, the Investigator may call any necessary supporting witnesses to give evidence. The committee will give the member an opportunity to challenge any evidence put forward by any witness called by the Investigator.

9.4 The member will have the opportunity to make representations to support his or her version of the facts and, with the committee's permission, to call any necessary witnesses to give evidence.

9.5 The committee may at any time question any of the people involved or any of the witnesses, and will allow the Investigator to challenge any evidence put forward by witnesses called by the member.

9.6 If the member disagrees with any relevant fact in the investigator's report, without having given prior notice of the disagreement, he or she must give good reasons for not mentioning it before the hearing. After considering the member's explanation for not raising the issue at an earlier stage, the committee may, if the Investigator is present:

- continue with the hearing, relying on the information in the Investigator's Report;
- allow the member to make representations about the issue, and invite the Investigator to respond and call any witnesses, as necessary; or
- adjourn the hearing to arrange for appropriate witnesses to be present.

Should the circumstances mentioned in paragraph 9.6 arise, and the Investigator is not present, the committee will consider whether or not it will be in the public interest to continue in his or her absence. If the committee decides that it is not in the public interest to continue, it shall adjourn the hearing to allow the Investigator to attend or to make further representations.

9.7 The committee may at any stage prior to the conclusion of the hearing adjourn the hearing and require the Investigator to seek further information or undertake further investigation on any point specified by the committee. No more than one adjournment may be allowed on this basis.

9.8 The committee may at any stage prior to the conclusion of the hearing adjourn the hearing and make a written request to the ethical standards officer of the Standards Board that the matter is referred to the ethical standards officer for further investigation. The committee must set out its reasons for making the request. Only one such request may be made by the committee.

9.9 The committee will usually move to another room to consider the representations and evidence in private. The clerk shall accompany the committee.

9.10 On their return, the chairman will announce the committee's findings of fact.

10 Did the member fail to comply with the 'Code of Conduct'?

10.1 The committee will determine whether or not, based on the facts either as agreed at section 9.2 above or based on its findings following sections 9.3 to 9.10, the member has failed to comply with the 'Code of Conduct' (Code).

10.2 The committee will consider any oral or written representations from the member as to why the committee should decide that he or she has not failed to comply with the Code of Conduct.

10.3 The committee will consider any oral or written representations from the Investigator as to why the committee should decide that the member has failed to comply with the Code of Conduct.

10.4 The committee may, at any time, question anyone involved on any point they raise in their representations.

10.5 The member will, if present, be invited to make any final relevant points.

10.6 The committee will move to another room to consider the representations. The clerk shall accompany the committee.

10.7 The committee may make one of the following findings:-

- the member has not failed to comply with the council or other relevant authority's Code of Conduct; or
- the member has failed to comply with the council or other relevant authority's code of conduct.

10.8 On their return, the chairman will announce the committee's decision as to whether or not the member has failed to comply with the Code of Conduct.

11 If the member has not failed to comply with the Code of Conduct

11.1 If the Committee decides that the member has not failed to comply with the Code of Conduct, in the manner set out in the investigator's report, the committee will consider, having regard to any oral or written representations from the Investigator, whether it should make any recommendations to the Council or other relevant authority with a view to promoting high standards of conduct among members.

11.2 If the committee considers, from the evidence which they have received during the hearing, that a member has failed to comply with the Code of Conduct for reasons other than those covered by the complaint) the chairman will outline the committee's concerns whilst recognising that there can be no further action without a written complaint.

11.3 Finally, the chairman will ask the member whether he/she wishes the council not to publish a statement of its findings in accordance with the Regulations.

12. If the member has failed to comply with the Code of Conduct

12.1 If the committee decides that the member has failed to comply with the Code of Conduct, it will consider any oral or written representations from the Investigator and the member as to:

- whether or not the committee should impose a sanction; and
- what form any sanction should take.

12.2 The committee may question the Investigator and member, and take legal advice, to make sure they have the information they need in order to make an informed decision.

12.3 The committee will then move to another room to consider whether or not to impose a sanction on the member and, if so, what the sanction should be. The clerk shall accompany the committee.

12.4. In accordance with paragraph 19 of the regulations the committee may impose any one of, or any combination of the following sanctions:-

(a) censure of the member;

(b) restriction for a period not exceeding six months of the member's access to the premises of the Council or authority concerned or the member's use of its resources, provided that those restrictions—

(i) are reasonable and proportionate to the nature of the breach; and

(ii) do not unduly restrict the member's ability to perform the functions of a member;

(c) partial suspension of the member for a period not exceeding six months;

(d) suspension of the member for a period not exceeding six months;

- (e) that the member submits a written apology in a form specified by the committee;
- (f) that the member undertakes such training as the committee specifies;
- (g) that the member participates in such conciliation as the committee specifies;
- (h) partial suspension of the member for a period not exceeding six months or until such time as the member has submitted a written apology in a form specified by the committee;
- (i) partial suspension of the member for a period not exceeding six months or until such time as the member has undertaken such training or has participated in such conciliation as the committee specifies;

12.5 On their return, the chairman will announce the committee's decision

12.6 Any sanction imposed by the committee (other than censure) shall commence immediately unless the committee directs that it shall commence on any date specified within six months of the date of the hearing.

12.7 If, at any time before the committee has determined upon any appropriate sanction, the committee considers that the nature of the failure to comply with the Code of Conduct is such that the appropriate sanction would exceed the powers of the Standards Committee, the committee may request that the matter is referred to the adjudication panel for determination.

13. The written decision

13.1 The committee will announce and provide a short written note of its decision on the day of the hearing. It will issue a full written decision as soon as reasonably practicable after the hearing.

13.2 After the hearing, the ethical governance officer will prepare a written notice of the committee's determination and shall arrange for the distribution and publication of the notice in accordance with the requirements of paragraph 20 of the regulations.

14. Appeals

14.1 The member will be advised of their right to appeal in accordance with paragraph 21 of the regulations.

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