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CONSTITUTIONAL REVIEW WORKING PARTY

26 APRIL 2012

A meeting of the Constitutional Review Working Party will be held at **9.30 am on Thursday, 26 April 2012** in the Austen Room, Council Offices, Cecil Street, Margate, Kent.

Membership:

Independent Members: Mr R Hills (Chairman) and Mr B Hinchley (Vice-Chairman);

Councillors: Hayton, Nicholson, Watkins and Wright

SUPPLEMENTARY AGENDA NO. 1

Item
No

Subject

4. **FUTURE CODE OF CONDUCT COMPLAINTS SYSTEM** (Pages 1 - 22)

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FUTURE CODE OF CONDUCT COMPLAINT SYSTEM

To: **Constitutional Review Working Party - 26 April 2012**
Standards Committee - 9 May 2012
Annual Council - 17 May 2012

By: **Harvey Patterson, Corporate & Regulatory Services Manager and Monitoring Officer**

Classification: **Unrestricted**

Summary: To recommend to Council the establishment of a voluntary Standards Committee for the Council from 1 July 2012

To recommend to Council the adoption of a provisional Member's Code of Conduct for the Council year 2012/13 in the same terms as the current Member's Code of Conduct

To consider a revised procedure for the investigation of complaints alleging a breach of the Member's Code of Conduct

For Decision

1.0 Introduction and Background

- 1.1 As Members will be aware, the Localism Act received the Royal Assent on 15 November 2011. Members will also recall that in the end, Chapter 7 of the Localism Act 2011 (the Act), required the Council and the Town and Parish Councils established in Thanet to adopt a Members Code of Conduct consistent with the seven 'Nolan' principles. It further required the Council to make and adopt 'arrangements' for the investigation of complaints alleging a failure by a member to comply with the adopted Members Code of Conduct (including a complaints made against a Town and Parish Councillors). However, although the Act places the Council (and the Town and Parish Councils) under a duty to promote and maintain high standards of ethical conduct by elected and co-opted members, it does not require the Council to continue to have a Standards Committee. It did however require the Council to appoint at least one 'Independent Person' (who may not be a co-opted member of a voluntary Standards Committee) whose views must be sought and taken into account, by the Council before it makes its decision on an allegation of misconduct that it has decided to investigate. The Independent Person's views may also be sought by the Council at other times as well and may further be sought by District and Town/Parish Councillors if they are the subject of allegations of misconduct. As currently enacted the Act does not permit existing Independent Members of the statutory Standards Committee to be eligible for appointment as an Independent Person. Representations have been made to the Secretary of State to legislate to remove this prohibition and there are now some indications from the Minister that transitional arrangements might be published that would allow such re-appointment. In the meantime, the Standards Board for England was formally abolished with effect from 31 March 2012.
- 1.2 Transitional arrangements are going to be put in place to continue the current Standards regime until the new Standards regime is in place and it is expected that the implementation date for the new regime will now be 1 July 2012. However, there are already some indications that the planned implementation date may be further postponed because as at the date of writing this report the Department for Communities and Local Government (CLG) and the Local Government Association (LGA) have only just published suggested Codes of Conduct and CLG has yet to publish the regulations that will define

the interests that members will have to declare in the Register of Members Interests and the circumstances in which pecuniary interests will have to be disclosed at meetings of the Council.

- 1.3 In terms of the Council's approach to the new regime, on 14 July 2011 full Council agreed a number of key principles (Minute 29/2011 refers) as follows :
- That the principle of adopting a voluntary Code of Conduct for elected and co-opted Members of Thanet District Council upon the abolition of the mandatory Code of Conduct, be agreed;
 - That the principle of establishing a voluntary Standards Committee to promote and maintain high standards of ethical conduct and to provide advice and guidance to Members on compliance with the Voluntary Code of Conduct, be agreed;
 - That the voluntary Standards Committee be composed of elected Councillors and co-opted Independent Members in proportions to be agreed by full Council;
 - That, in advance of the abolition of the current Standards Framework, the statutory Standards Committee in consultation with the Group Leaders, be responsible for formulating a voluntary Code of Conduct for elected and co-opted Members of Thanet District Council, the Terms of Reference for a voluntary Standards Committee which includes members of the public and cost effective and efficient procedures for the investigation and determination of complaints alleging a breach of the voluntary Code of Conduct;
 - That an informal cross-party working party be set up to consider putting forward suggestions to the Standards Committee and onward transmission to the Constitutional Review Working Party to make the Standards Regime more Member-friendly.

Note however that under the Localism Act 2011 it is now mandatory to adopt a Code of Conduct under the new regime.

- 1.4 The Group Leaders duly nominated members to a Standards Working Party which met on 19 December 2011. The Working Party noted that at that time the LGA and the Association of Council Secretaries and Solicitors were considering the drafting and publication of a model Code of Conduct and that Kent Secretaries and Monitoring Officers were meeting in the new year to consider how a standardised lighter touch members complaints investigation procedure might be developed. The Working Party requested not to meet again until it had a draft Code of Conduct and Member Complaints Procedure to consider.
- 1.5 Given that Kent Secretaries only relatively recently reached agreement on an common member complaints procedure (which may nevertheless be modified by Councils at a local level) and 'rival' model Codes of Conduct have only just been published by CLG and the LGA (and the regulations on discloseable pecuniary interests are still awaited) and that constitutional changes like these have to be considered by the Constitutional Review Working Party and the Standards Committee prior to consideration by full Council, it has not been possible in the time available to programme in prior consultation with the Standards Working Party. It is therefore proposed that a copy of this report is considered separately by the Standards Working Party - whose comments and views will then be reported to the Standards Committee when it meets to consider this report on 9 May 2012.

2.0 Members Code of Conduct

- 2.1 As noted above, possible model Codes of Conduct have only just been published and will require detailed consideration by the Standards Working Party, the Constitutional Review Working Party and the Standards Committee when the regulations on discloseable pecuniary interests have been published. It is therefore recommended that for the Council

year 2012/13 the Council adopts a voluntary Code of Conduct in the terms of the current Member's Code of Conduct. This will ensure that the Council will have provisional Member's Code of Conduct in place at the transitional date of 1 July 2012 while properly deliberating the terms of the replacement Code (which it is hoped can be adopted at the Council meeting on 12 July 2012).

3.0 Establishment and Composition of the Standards Committee

- 3.1 The Council is required to continue to have a statutory Standards Committee comprising seven elected Councillors, four appointed Independent (non councillor) Members and three nominated Town/ Parish Representatives, until the date proposed in Regulations to bring the new Standards regime into full force and effect - currently 1 July 2012. It is therefore proposed that the current Independent Members and Town/Parish Representatives are re-appointed to the Statutory Standards Committee by Council at the annual meeting to hold office until 30 June 2012 or such later date being the day before the date given in Regulations as the date by which Chapter 7 of the Localism Act 2011 comes into full force and effect.
- 3.2 However, as Council has resolved to establish a voluntary Standards Committee upon the abolition of the statutory Standards Committee, it is therefore also recommended that a voluntary Standards Committee comprising of seven elected District Members, three Town/Parish co-opted representatives and two co-opted Independent (non councillor) Members is established to take effect from 1 July 2012. This will enable the Committee to continue to promote high standards of ethical conduct and provide advice and guidance to members on compliance with the new Member's Code of Conduct when adopted. It will also, as now, provide a pool of members to deal with complaints casework in accordance with the adopted member complaints investigation procedure.
- 3.3 Suggested Terms of Reference for the voluntary Standards Committee are attached at **Annex 1**. As this will be a non statutory advisory Committee established pursuant to Sections 101 and 102 of the Local Government Act 1972, it is not only possible to co-opt Town/Parish Representatives and appoint Independent (non councillor) Members; such members will also have voting rights on recommendations to Council (but not on decisions delegated to the Committee). However, unless the Council agrees (without dissent) to waive political balance, it will be necessary to apply strict political balance to the TDC component and appoint a TDC councillor to the roles of Chairman and Vice Chairman. Council can co-opt the Town/Parish Representatives to the Standards Committee on the nomination of the Thanet Association of Local Councils but the two Independent Members of the voluntary Standards Committee should be appointed by Council on the recommendations of the Standards Appointments Panel. Accordingly, the Monitoring Officer should be given delegated authority to commence the recruitment procedure using the existing Independent Member job descriptions.

4.0 Independent Person(s)

- 4.1 As explained above the Council has to appoint at least one Independent Person who must be consulted before the Council makes any findings in relation to a complaint that has been investigated. He or she may also be consulted by the Council at the initial complaints assessment stage or by the member the subject of a complaint. It is therefore recommended that the Council appoints two Independent Persons in order to manage potential conflicts and resignations as well as sickness and holiday absence.
- 4.2 Accordingly, the Monitoring Officer should be given delegated authority to prepare a job description for this position and commence the recruitment procedure using the Standards Appointments Working Party to make recommendations to Council.
- 4.3 The law allows the Independent Person to be paid an allowance and/or expenses. It does not allow the co-opted Independent Member to receive an allowance, although expenses can be covered. The Constitutional Review Working Party are asked to agree that the

Monitoring Officer put forward proposals regarding allowances and expenses to the annual meeting of the Council.

5.0 Dispersations

- 5.1 Currently the statutory Standards Committee deals with applications for dispensations from District and Town/Parish Councillors who wish to participate in meetings notwithstanding the fact they have a prejudicial interest in a matter to be discussed. Dispensations will continue to be available under the new regime to permit members with discloseable pecuniary interests to participate in meetings. However, Town and /Parish Councils will be required to deal with their own dispensations. It is therefore recommended that in relation to district councillor dispensations, this function be delegated to the Monitoring Officer in consultation with the Independent Person, but that the Monitoring Officer has the power to report applications to Standards Committee for decision where he does not feel able to make a decision. Alternatively the granting of dispensations can be delegated by Council to the Standards Committee but it should be noted that the Town/Parish Representatives and the independent Members would not be able to vote on a dispensation and therefore the decision whether or nor to grant a dispensation could be subject to political considerations.

6.0 Members Complaints Procedure

- 6.1 Attached as **Annex 2** is a suggested method of dealing with complaints of misconduct by District and Parish Councillors. As mentioned above, these processes are still work in progress and may need to be refined in the light of comments made by the Working Party. Once finally approved by Council, these arrangements will need to be published.
- 6.2 The main thrust of the suggested new process is to enable complaints to be dealt with simply, efficiently and proportionately by the Monitoring Officer in consultation with the Independent Person, with an opportunity to deal with complaints informally if appropriate. It is therefore proposed that the Monitoring Officer is given delegated powers to make a final decision on the **initial assessment** of all Code of Conduct complaints. This principle requires further elaboration.
- 6.3 The intention is that in the most simple cases, the Monitoring Officer, in consultation with the Independent Person, should decide at the outset if a complaint should be investigated, or other action should be taken, or no action should be taken.
- 6.4 However, in cases of doubt or difficulty the Monitoring Officer will refer the complaint to a three member Standards Assessment Panel chaired by one of the Independent Members of the Standards Committee. As this would be an advisory Committee whose job it is to consider the complaints and make an initial assessment recommendation to the Monitoring Officer, each member will have a vote - nor with a three member Panel will the use of second or casting votes by the Chairman ever come into issue. The Monitoring Officer will then make the final decision having due regard to the recommendations of the Standards Assessment Panel. Moreover, if the complaint concerned a Town/Parish Councillor then one of the Town/Parish Representatives would sit with a district Councillor and the Independent Member Chairman to conduct the initial assessment hearing. In all such cases the officer advising the Standards Assessment Panels would be the Deputy Monitoring Officer as it would be inappropriate for the Monitoring Officer as the final decision maker to be involved at this stage.
- 6.5 If a complaint is recommended for investigation, the Monitoring Officer will use his discretion as to the nature of the investigation. On receipt of the Investigation Report, if the Monitoring Officer is satisfied, having consulted the Independent Person, that there has been no breach of the Code, then that will be the end of the matter. The Monitoring Officer could also decide the issue could be dealt with by other action. However, if the Monitoring Officer believes that there has been a breach which cannot be resolved by other action, then the issue will be heard by the Standards Hearing Sub-Committee.

6.6 The Standards Hearing Sub-Committee will comprise 3 District Councillors, with the Chairman being nominated from one of its membership. It will have delegated power from the Standards Committee. An Independent Person will be present as an observer. The Independent Person will have had sight of the papers before the meeting. If there are any questions he/she has for the subject member, then these should be given to the Monitoring Officer before the Hearing. The Independent Person may make a verbal observation following submissions and before the Subject Member speaks. The Independent Person leaves the room while the members of the Hearing Committee consider the submissions. If there is a finding of breach, Annex 2 describes the sanctions which are open to it, the majority of which will involve recommendations elsewhere. Members will see that in the case of Parish Councils, recommendations will be made to them to undertake suggested courses of action. The main sanction will be publicising the fact that the Member has been found to have breached the Code of Conduct. This could be published on the Council's website accompanied by a press release.

6.7 There is no provision for appeal on assessment or hearing decisions.

7.0 **Other issues currently carried out by the Standards Committee**

7.1 The Council will continue to have a duty to promote and maintain high standards of conduct by Members and it is anticipated that at its annual meeting the Committee will receive a report of the past year's activities from its Chairman and it could set up a work programme for the Monitoring Officer. It would seek to ensure that Members and Parish Members did receive sufficient training in conduct issues. It would also consider any Codes of Conduct before making recommendations to the Council to adopt or amend a Code.

7.2 The Constitutional Review Working Party will comprise of 6 District Councillors. It will remain politically balanced. There will no longer be an Independent Chairman or Vice Chairman. It will continue to make recommendations to the Standards Committee.

8.0 **Corporate Implications**

8.1 **Financial and VAT**

8.1.1 There are no financial implications arising from this report. Any costs arising from the new standards regime can be contained within existing budgets.

8.2 **Legal**

8.2.1 The proposals contained within the report comply with the provisions of the Localism Act 2011 as currently known. It should be noted that some of the content reflects indications from the Department for Communities and Local Government that it proposes to make transitional arrangements, but the Regulations governing such arrangement have not yet been published.

8.3 **Corporate**

8.3.1 While the changes introduced by the Localism Act do not represent a root and branch alteration of the standards regime, the Code of Conduct and detailed procedures will change. There will be a need for training at both District and parish level and also a need to update the information the Council provides about alleged breaches of the code of conduct on its web site and in other publications.

8.4 **Equity and Equalities**

8.4.1 It is suggested that there are no specific equity or equalities implications arising from these proposals. These proposals do not have any particular implications regarding one "protected group" over another.

9.0 Recommendation(s)

- 9.1 It is recommended that the Working Party makes the following recommendations to the Standards Committee, and that this Committee receive further reports as and when more information becomes available.
- 9.2 It is therefore proposed that the current Independent Members and Town/Parish Representatives are re-appointed to the Statutory Standards Committee by Council at the annual meeting to hold office until 30 June 2012 or such later date being the day before the date given in Regulations as the date by which Chapter 7 of the Localism Act 2011 comes into full force and effect.
- 9.3 That Council appoints two Independent Persons and two Independent Members of the Standards Committee and that the Monitoring Officer be given delegated authority to agree the Job Description with the Chairman of the Standards Committee and to commence the recruitment process, culminating in a recommendation being made to Council as to who should be nominated (following consideration by the Standards Appointment Working Party).
- 9.4 That as from the commencement date (1 July 2012) the new non statutory Standards Committee should comprise seven District Members of the Council (i.e. that it should not be politically balanced) and that Members consider whether 3 Town/Parish representatives be appointed as members of the Committee and that members consider whether there should be two independent co-opted members, and that the existing arrangement be maintained until the commencement date.
- 9.5 That an Assessment Sub-Committees comprising 2 Councillors one Independent Member, (Chairman), or 1 Councillor, 1 Independent Member and 1 Town/Parish Councillor in the case of Town/Parish complaints, is appointed from the Membership of Standards Committee as and when the Monitoring Officer requires.
- 9.6 That Hearing Sub-Committees of 3 Councillors (not politically balanced) be appointed to hear complaints where in the opinion of the Monitoring Officer there has been a breach of the Code of Conduct. Members may wish to consider whether Town/Parish representatives should be appointed to the Sub-Committees as non voting Members when Town/Parish Councillors are the subject of the complaint.
- 9.7 That the procedure set out at Annex 2 for dealing with complaints be adopted.
- 9.8 That further reports are submitted as and when officers have further developed the draft code of conduct for the Working Party to consider.
- 9.9 It is recommended that in relation to district councillor dispensations, this function be delegated to the Monitoring Officer in consultation with the Independent Person, but that the Monitoring Officer has the power to report applications to Standards Committee for decision where he does not feel able to make a decision.
- 9.10 Standards Committee continues to be responsible for promoting and maintaining high standards of conduct by Members including making recommendations to Council as to the Code of Conduct any by maintaining an oversight of the training process.
- 9.11 The new system of Code of Conduct complaints should be known as Councillor Code of Conduct Complaints.
- 9.12 The terms of reference for the Constitutional Review Working Party be amended to reflect the change of membership.
- 9.13 The terms of reference for the Standards Committee, attached at Annex 1 are agreed

- 9.14 The Monitoring Officer should be given delegated authority to commence recruitment of 2 co-opted Independent Members of the new voluntary Standards Committee using the existing Independent Member job descriptions.
- 9.15 The Monitoring Officer should be given delegated authority to prepare a job description for the position of Independent Person and commence the recruitment procedure using the Standards Appointments Working Party to make recommendations to Council with the names of the 2 Independent Persons who they have selected.
- 9.16 The Constitutional Review Working Party are asked to agree that the Monitoring Officer put forward proposals to the annual meeting of the Council concerning allowances and/or expenses regarding Independent Persons and co-opted Independent Members.

10.0 Decision Making Process

- 7.1 Recommendations from the Constitutional Review Working Party will be reported to the Standards Committee for referral to Council.
- 7.2 This report will be considered by the Standards Committee on 9 May 2012 and the recommendations will be reported to Annual Council on 17 May 2012.

Contact Officer:	<i>Harvey Patterson, Corporate & Regulatory Services Manager</i>
Reporting to:	<i>Dr Sue McGonigal, Chief Executive</i>

Annex List

<i>Annex 1</i>	<i>Terms of Reference for the Standards Committee</i>
<i>Annex 2</i>	<i>Arrangements for dealing with Code of Conduct Complaints under Localism Act 2011</i>

Background Papers

Title	Details of where to access copy
<i>Localism Act 2011</i>	http://www.legislation.gov.uk/ukpga/2011/20/contents/enacted

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Annex 1

The Standards Committee

General

A Committee of the Council established to make recommendations in relations to ethics and the standards of conduct expected of elected and co-opted members of Thanet District Council and the Town and Parish Councils established in the administrative area of Thanet District Council.

Membership, Chairmanship and Quorum

Number of Members	Twelve members comprising seven District Councillors, two Independent (non councillor) Members and three Town/Parish Representatives
Substitute Members Permitted	No
Political Balance Rules apply	Yes- to the seven District Councillors
Appointments/Removals from Office	By resolution of full Council.
Restrictions on Membership	Cabinet Leader ineligible
Restrictions on Chairmanship/Vice-Chairmanship	None.
Quorum	Three
Number of ordinary meetings per Council Year	Meetings will be called as required
Standing Sub Committees	Standards Assessment Working Party and Standards Hearing Sub Committee

Terms of Reference

1. Recommending to Council for approval the terms of the Code of Conduct for Members and any alterations or amendments thereto.
2. Recommending to Council for approval the terms of the Code of Conduct for Officers and any alterations or amendments thereto.
3. Recommending to Council for approval the terms of any other codes or protocols relating to matters of conduct, ethics or propriety, including without limitation the Protocol on Member/Officer Relations and the Protocol on the Guidance of Planning Committee Members and Officers and any alterations or amendments thereto.
4. Receiving the recommendations of the Constitution Review Working Party and recommending to Council the terms of the Constitution for the Governance of Thanet District Council

5. Promoting and maintaining high standards of conduct by elected and co-opted members.
6. Monitoring and keeping under review the codes and protocols referred to in sub - paragraphs 1 to 3 above.
7. Assisting elected and co-opted members to observe the codes and protocols referred to in sub-paragraphs 1 and 3 above.
8. Advising on training or arranging training for elected and co-opted members on matters relating to the adopted Members Code of Conduct.
9. On the request of the Monitoring officer and so far as permitted by law, to grant dispensations to elected and co-opted members from the requirements relating to interests set out in the adopted Members Code of Conduct or in relevant regulations .
10. Responsibility for establishing the following Sub Committees to carry out the following functions:-
 - 10.1 A Standards Assessment Working Party with responsibility for making recommendations to the Monitoring Officer on whether or not further action or other action should be taken in respect of a complaint alleging a failure to comply with the Members Code of Conduct or whether such complaint should be the subject of an investigation.
 - 10.2 A Standards (Hearings) Sub Committee with responsibility for conducting a hearing into a complaint referred to it by the Monitoring Officer or the Standards Committee to determine whether there has been a failure by a member to comply with the Members Code of Conduct and in the event of a finding of failure to comply to determine what action to take in relation thereto.
11. The exercise of the responsibilities set out in Sub-Paragraph 1 and Paragraphs 3 to 10 above in relation to the Town and Parish Councils established in the administrative area of Thanet District Council and the elected and co-opted members of those Councils and for this purpose any reference in these Terms of Reference to the 'Members Code of Conduct' shall where the context so requires include any of the Members Codes of Conduct from time to time adopted by any of the Town and Parish Councils established in the administrative area of Thanet District Council.
12. Responsibility for the overview of the Council's complaints procedure including ombudsman investigations.

Delegations

1. The matters referred to in sub-paragraphs 5 to 12 (inclusive) above.

STANDARDS ASSESSMENT WORKING PARTY

General

A Working Party of the Standards Committee established to make recommendations to the Monitoring Officer on whether no further action or other action should be taken in respect of a complaint alleging a failure to comply with the Members Code of Conduct or whether such complaint should be the subject of an investigation. .

Membership, Chairmanship and Quorum

Number of Members	Three members of the Standards Committee including in all cases an Independent Member and in the case of a complaint against a town or parish councillor, at least one Town/Parish Representative
Substitute Members Permitted	No
Political Balance Rules apply	No
Appointments/Removals from Office	The Monitoring Officer is has delegated authority to appoint members on a per meeting basis
Restrictions on Membership	Reserved to members of the Standards Committee.
Restrictions on Chairmanship	No.
Quorum	Three
Number of ordinary meetings per Council Year	Meetings will be called as required

Terms of Reference

1. When required to do so to conduct an initial assessment of a complaint alleging that an elected or co-opted Member of the Council or of a Town or Parish Council established in the administrative district of Thanet failed to comply with the Code of Conduct for elected and co-opted Members adopted by their Council and make a recommendations to the Monitoring Officer that:
 - (i) No further action be taken in respect of the complaint; or
 - (ii) Other Action should taken in respect of the complaint; or
 - (iii) The complaint should be the subject of an investigation.

2. To produce a written summary of its consideration of a complaint to include the main points considered, its conclusion on the complaint and the reasons for that conclusion and to make arrangements to ensure that such summary is available

for inspection by members of the public at the Council Offices for a period of six years beginning with the date of the meeting that considered the complaint

Delegations

All matters in the Terms of Reference are fully delegated.

STANDARDS HEARINGS SUB COMMITTEE

General

A Sub Committee of the Standards Committee established to conduct hearings into allegations referred to it by the Monitoring Officer or the Standards Committee that a district, town or parish council or a co-opted members of a district, town or parish council failed to comply with the terms of the Code of Conduct for elected or co-opted Members or that a district councillor or co-opted member of the Council failed to comply with an adopted local or non-statutory Code or Protocol governing the ethical conduct of elected or co-opted members.

Membership, Chairmanship and Quorum

Number of Members	Three
Substitute Members Permitted	No
Political Balance Rules apply	No
Appointments/Removals from Office	The Monitoring Officer has delegated authority to appoint members on a per meeting basis.
Restrictions on Membership	Reserved to elected members of the Standards Committee
Restrictions on Chairmanship/Vice-Chairmanship	None A chairman will be elected at each meeting on a per meeting basis
Quorum	Three.
Number of ordinary meetings per Council Year	Meetings will be called as required

Terms of Reference

1. To hold a hearing and make a determination in relation to a complaint referred to it by the Monitoring Officer or the Standards Committee alleging a breach of any local or non-statutory Code or Protocol governing the ethical conduct of elected or co-opted members from time to time adopted by the Council
2. In any case where the Sub Committee determines that a member has failed to comply with the Members Code of Conduct or with any local or non-statutory Code or Protocol governing the ethical conduct of elected or co-opted members, to determine what action to take in respect thereof including the power to make recommendations to the Council of which the subject member is a member and the power to instruct the Monitoring Officer to publicise its decision on the

Council's web site and/or a newspaper circulating in the locality (whether a paid for or free newspaper)

3. To give notice in writing of any of its determinations including the reasons for such determination.

Delegations

All matters in the Terms of Reference are fully delegated.

Notes

1. An Independent Person shall be entitled to attend any hearing and make representations to the Sub Committee before it makes any determination as to whether there has been a failure to comply with the Members Code of Conduct or in the event of such failure, what action to take in relation thereto.

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ARRANGEMENTS FOR DEALING WITH COUNCILLOR CODE OF CONDUCT COMPLAINTS UNDER THE LOCALISM ACT 2011

1 Context

These Arrangements set out how you may make a complaint that an elected or co-opted member of Thanet District Council *or of a Town/Parish Council within its area* has failed to comply with the authority's Code of Conduct, and sets out how Thanet District Council will deal with allegations of a failure to comply with the authority's Code of Conduct.

Under Section 28(6) and (7) of the Localism Act 2011, the Council must have in place "arrangements" under which allegations that a member or co-opted member of the authority *or of a Town/Parish Council within the authority's area*, or of a Committee or Sub-Committee of the authority, has failed to comply with that authority's Code of Conduct can be investigated and decisions made on such allegations.

Such arrangements must provide for the authority to appoint two Independent Persons, whose views must be sought by the authority before it takes a decision on an allegation which it has decided shall be investigated, and whose views can be sought by the authority at any other stage, or by a member *or a member or co-opted member of a Town/Parish Council* against whom an allegation as been made.

2 The Code of Conduct

The Council has adopted a Code of Conduct for members, which is attached as Appendix ??? to these arrangements and available for inspection on the authority's website and on request from Reception at the Civic Offices. [Yet to be drafted]

[Each Town/Parish Council is also required to adopt a Code of Conduct. If you wish to inspect a Town/Parish Council's Code of Conduct, you should inspect any website operated by the Town/Parish Council or request the Town/Parish clerk to allow you to inspect the Town/Parish Council's Code of Conduct.]

3 Making a complaint

If you wish to make a complaint, please write or email to –

The Monitoring Officer
Thanet District Council
PO Box 9
Cecil Street
Margate
Kent
CT9 1XZ

The Monitoring Officer is a senior officer of the authority who has statutory responsibility for maintaining the register of members' interests and who is responsible for administering the system in respect of complaints of member misconduct.

In order to ensure that we have all the information which we need to be able to process your complaint, please complete and send us the model complaint form, which can be downloaded from the authority's website, next to the Code of Conduct.

Please do provide us with your name and a contact address, so that we can acknowledge receipt of your complaint. The authority does not normally investigate anonymous complaints, unless there is a clear public interest in doing so.

The Monitoring Officer will normally acknowledge receipt of your complaint within 10 working days of receiving it, and will subsequently notify you of any decision taken upon it

If the complaint appears to the Monitoring Officer not to be a substantive allegation of misconduct under the Code of Conduct, s/he will so inform the complainant but may ensure where appropriate that the matter is dealt with under a more relevant procedure eg: if it is a complaint about a service or an officer or a statement of policy disagreement.

Where the complaint does appear to be an allegation of misconduct under the code, the Monitoring Officer (as well as acknowledging the complaint) will normally notify the member against whom the allegation is made of receipt of the complaint together with a summary of the allegation. S/he will explain that s/he will consult the Council's appointed Independent Person about the allegation before deciding on the appropriate way to proceed.

Where the Monitoring Officer is of the opinion that such notification to the subject member would be contrary to the public interest or could prejudice any person's ability to investigate the allegation s/he will consult the Independent Person and may then decide that such notification shall not be given at that stage.

4 Will your complaint be investigated?

The Monitoring Officer will review every complaint received and, after consultation with the Independent Person, take a decision as to whether it merits formal investigation. This decision will normally be taken within **30 working** days of receipt of full information in relation to your complaint. Where the Monitoring Officer has taken a decision, he/she will inform you of his/her decision and the reasons for that decision.

[NOTE: – The Kent Secretaries Group's view is that MOs need to grasp the opportunity to raise the profile of local resolution options and remove bureaucracy and inflexibility. It would be sensible to informally consult IP on all cases prior to making delegated decisions at this stage, even though not legally required, in order to protect MO from allegations and also to keep the IP fully engaged. In addition, it is considered that MOs should continue to be able to refer sensitive or borderline cases to a member 'Assessment Panel' at their sole discretion.]

Where he/she requires additional information in order to come to a decision, he/she may come back to you for such information, and may request information from the member against whom your complaint is directed. Where your complaint relates to a Town/Parish Councillor, the Monitoring Officer may also inform the Town/Parish Clerks and seek information from them.

In appropriate cases, the Monitoring Officer may seek to resolve the complaint informally, without the need for a formal investigation. Such informal resolution may involve the member accepting that his/her conduct was unacceptable and offering an apology, or other remedial action. Where the member makes a reasonable offer of local resolution, the

Monitoring Officer will take account of this in deciding whether the complaint merits formal investigation.

5 How is the investigation conducted?

The Council has adopted a procedure for the investigation of misconduct complaints, which is attached as Appendix ?? to these arrangements.

[NOTE: – The Kent Secretaries Group considers that the investigation procedure adopted must be flexible and allow the MO to adopt a process proportionate to the nature and seriousness of the case. This may involve little more than an exchange of letters or written representations in some cases. The existing adopted investigation procedures do not allow such flexibility. Not yet finalised.]

If the Monitoring Officer decides that a complaint merits formal investigation, he/she will appoint an Investigating Officer, who may be another senior officer of the authority, an officer of another authority or an external investigator but who will usually be the Council's Deputy Monitoring Officer. The Investigating Officer will decide whether he/she needs to meet or speak to you to understand the nature of your complaint and so that you can explain your understanding of events and suggest what documents the Investigating Officer needs to see, and who the Investigating Officer needs to interview.

The Investigating Officer would normally write to the member against whom you have complained and provide him/her with a copy of your complaint, and ask the member to provide his/her explanation of events, and to identify what documents he needs to see and who he needs to interview. In exceptional cases, where it is appropriate to keep your identity confidential or disclosure of details of the complaint to the member might prejudice the investigation, the Monitoring Officer can delete your name and address from the papers given to the member, or delay notifying the member until the investigation has progressed sufficiently.

At the end of his/her investigation, the Investigating Officer will produce a draft report and will send copies of that draft report, in confidence, to you and to the member concerned, to give you both an opportunity to identify any matter in that draft report which you disagree with or which you consider requires more consideration.

Having received and taken account of any comments which you may make on the draft report, the Investigating Officer will send his/her final report to the Monitoring Officer.

6 What happens if the Investigating Officer concludes that there is no evidence of a failure to comply with the Code of Conduct?

The Monitoring Officer will review the Investigating Officer's report and, if (having consulted the Independent Person) he is satisfied that the Investigating Officer's report is sufficient, the Monitoring Officer will write to you and to the member concerned and to the Town/Parish Council, where your complaint relates to a Town/Parish Councillor, notifying you that he is satisfied that no further action is required, and give you both a copy of the Investigating Officer's final report. If the Monitoring Officer is not satisfied that the investigation has been conducted properly, he may ask the Investigating Officer to reconsider his/her report.

7 What happens if the Investigating Officer concludes that there is evidence of a failure to comply with the Code of Conduct?

The Monitoring Officer will review the Investigating Officer's report and after consulting the Independent Person will then either send the matter for local hearing before the Hearings Panel or seek local resolution.

7.1 Local Resolution

The Monitoring Officer may consider that the matter can reasonably be resolved without the need for a hearing. In such a case, he/she will consult with the Independent Person and seek to agree a fair resolution which also helps to ensure higher standards of conduct for the future. Such resolution may include the member accepting that his/her conduct was unacceptable and offering an apology, and/or other remedial action by the authority. If the member complies with the suggested resolution, the Monitoring Officer will report the matter to the Standards Committee *[and the Town/Parish Council]* for information, but will take no further action.

7.2 Local Hearing

If the Monitoring Officer having consulted the Independent Person considers that local resolution is not appropriate, then the Monitoring Officer will report the Investigating Officer's report to the Hearings Panel which will conduct a local hearing before deciding whether the member has failed to comply with the Code of Conduct and, if so, whether to take any action in respect of the member.

The Council has agreed a procedure for local hearings, which is attached as Appendix ??? to these arrangements. [Still to be drafted].

Note: In the same way as the existing Investigation Procedure is too unwieldy and inflexible, so too is the existing Hearing Procedure.

Essentially, the Monitoring Officer will conduct a "pre-hearing process", requiring the member to give his/her response to the Investigating Officer's report, in order to identify what is likely to be agreed and what is likely to be in contention at the hearing, and the Chair of the Hearings Panel may issue directions as to the manner in which the hearing will be conducted. At the hearing, the Investigating Officer will present his/her report, call such witnesses as he/she considers necessary and make representations to substantiate his/her conclusion that the member has failed to comply with the Code of Conduct. For this purpose, the Investigating Officer may ask you as the complainant to attend and give evidence to the Hearings Panel. The member will then have an opportunity to give his/her evidence, to call witnesses and to make representations to the Hearings Panel as to why he/she considers that he/she did not fail to comply with the Code of Conduct.

If the Hearings Panel, with the benefit of any advice from the Independent Person, may conclude that the member did not fail to comply with the Code of Conduct, it will dismiss the complaint. If the Hearings Panel concludes that the member did fail to comply with the Code of Conduct, the Chair will inform the member of this finding and the Hearings Panel will then consider what action, if any, the Hearings Panel should take as a result of the member's failure to comply with the Code of Conduct. In doing this, the Hearings Panel will give the member an opportunity to make representations to the Panel and will consult the Independent Person, but will then decide what action, if any, to take in respect of the matter..

8 What action can the Hearings Panel take where a member has failed to comply with the Code of Conduct?

NOTE: *It appears to be the case that even through districts must adopt “arrangements” to cover Town/Parish Councils, any decision of a district on sanctions can only in effect be a recommendation to the Town/Parish Council, who must then itself decide whether to accept the recommendation. In the absence of express powers, a district could not, for example, remove a Town/Parish Councillor from a committee, remove facilities from a Town/Parish Councillor etc. The district could only make a finding of breach/no breach and then recommend a course of action to the Town/Parish. This being so, the sub-group thought that there seemed little purpose in complicating the new regime by introducing Town/Parish co-optees onto panels. However, opinion within individual districts may well lead to a different views on this issue.*

The Council has delegated to the Hearings Panel such of its powers to take action in respect of individual members as may be necessary to promote and maintain high standards of conduct. Accordingly the Hearings Panel may –

- 8.1 Publish its findings in respect of the member’s conduct **e.g.: by providing a link to the relevant Decision Notice on a Standards/Complaints webpage.**
- 8.2 Report its findings to Council *or to the Town/Parish Council* for information **e.g. by way of inclusion in an annual report;**
- 8.3 Recommend to the member’s Group Leader (or in the case of un-grouped members, recommend to Council or to Committees) that he/she be removed from any or all Committees or Sub-Committees of the Council;
- 8.4 Recommend to the Leader of the Council that the member be removed from the Cabinet, or removed from particular Portfolio responsibilities;
- 8.5 Instruct the Monitoring Officer to *or recommend that the Town/Parish Council* arrange training for the member;
- 8.6 **Recommend to Council removal** *or recommend to the Town/Parish Council that the member be removed* from all outside appointments to which he/she has been appointed or nominated by the authority *or by the Town/Parish Council*;
- 8.7 Recommend to the Council that it withdraw *or recommend to the Town/Parish Council that it withdraws* facilities provided to the member by the Council, such as a computer, website and/or email and Internet access **provided such action is directed to the efficient management of the authority’s business and does not prevent the councillor fulfilling his/her duties as an elected member;** or
- 8.8 Recommend to the Council that it exclude *or recommend that the Town/Parish Council exclude* the member from the Council’s offices or other premises, with the exception of meeting rooms as necessary for attending Council, Committee and Sub-Committee meetings.

The Hearings Panel has no power to suspend or disqualify the member or to withdraw members’ or special responsibility allowances.

NOTE: *Although these draft arrangements suggest that the Hearings Panel would have delegated powers to make decisions on sanctions, it should be acknowledged that there are alternative options. For example, if one wanted to involve voting independent members and/or Town/Parish representatives on Panels, then the Panel could only be advisory, in*

relation to both its finding of breach/no breach and recommended sanction. The Panel's recommendations would then need to be reported elsewhere for final decision eg: full Council to agree that there has been a breach and to agree a censure (naming and shaming); the Group Leader to decide whether to remove from a committee etc.

9 What happens at the end of the hearing?

At the end of the hearing, the Chair will state the decision of the Hearings Panel as to whether the member failed to comply with the Code of Conduct and as to any actions which the Hearings Panel resolves to take. **Prior to reaching and announcing its decision in public, the Panel may retire to a separate room to deliberate in private. The MO may be called by the Panel if they require technical or legal guidance.**

As soon as reasonably practicable thereafter, the Monitoring Officer shall prepare a formal decision notice in consultation with the Chair of the Hearings Panel, and send a copy to you, to the member *[and to the Town/Parish Council]*, and make that decision notice available for public inspection.

10 Who are the Hearings Panel?

The Hearings Panel is a Sub-Committee of the Council's Standards Committee **and will consist of 3 members drawn from the membership of the Standards Committee.** If the complaint is about a Town/Parish Councillor the Sub-Committee will also include a non-voting representative of Town/Parish Councils. The Independent Person is invited to attend all meetings of the Hearings Panel and his views are sought and taken into consideration before the Hearings Panel takes any decision on whether the member's conduct constitutes a failure to comply with the Code of conduct and as to any action to be taken following a finding of failure to comply with the Code of Conduct. **The Independent Person otherwise takes no part in the discussions or deliberations of the Panel.**

[NOTE: The Kent Secretaries Group's view was that it was unnecessary to graft onto the imperfect statutory model any role for non-voting independent members. However it was recognised that some authorities may nonetheless seek to keep such people involved, albeit in a non-voting capacity.]

11 Who is the Independent Person?

The Independent Person is a person who has applied for the post following advertisement of a vacancy for the post, and is appointed by a positive vote from a majority of all the members of Council.

A person cannot be "independent" if he/she –

- 11.1 Is, or has been within the past 5 years, a member, co-opted member or officer of the authority;
- 11.2 *Is or has been within the past 5 years, a member, co-opted member or officer of a Town/Parish Council within the authority's area, or*
- 11.3 Is a relative, or close friend, of a person within paragraph 11.1 or 11.2 above. For this purpose, "relative" means –
 - 11.3.1 Spouse or civil partner;

- 11.3.2 Living with the other person as husband and wife or as if they were civil partners;
- 11.3.3 Grandparent of the other person;
- 11.3.4 A lineal descendent of a grandparent of the other person;
- 11.3.5 A parent, sibling or child of a person within paragraphs 11.3.1 or 11.3.2;
- 11.3.6 A spouse or civil partner of a person within paragraphs 11.3.3, 11.3.4 or 11.3.5; or
- 11.3.7 Living with a person within paragraphs 11.3.3, 11.3.4 or 11.3.5 as husband and wife or as if they were civil partners.

12 Revision of these arrangements

The Council may by resolution agree to amend these arrangements, and the Chair of the Hearings Panel may depart from these arrangements where he/she considers that it is expedient to do so in order to secure the effective and fair consideration of any matter.

13 Appeals

There is no right of appeal for you as complainant or for the member against a decision of the Monitoring Officer or of the Hearings Panel

If you feel that the authority has failed to deal with your complaint properly, you may make a complaint to the Local Government Ombudsman.

General Notes

1. *The Kent Secretaries Group discussed in some detail the various theoretical options for minimising the resource impact of Town/Parish Council complaints/dysfunction (eg: delegation, charging etc) but concluded that in reality the best option was to adopt the same "arrangements" for Town/Parish complaints but just ensure the flexibility and proportionality built into the new process was fully deployed in appropriate trivial or tit for tat Town/Parish complaints.*
2. *The 2008 Regulations enabled statutory Assessment Panels to operate outside the Access to Information regime. This would no longer be possible for assessment decisions (by Panels or under delegated powers). Assessment Panel reports, when used, may still be capable of exemption under Legal Privilege or Personal Information exemptions but otherwise maintaining confidentiality in the face of data protection or Fol requests appears to be fraught with uncertainty. Maybe our "arrangements" should expressly flag up for complainants and members that everything may be disclosable?*
3. *It would also be helpful if, through Kent Secretaries, a common approach could be agreed to appointment of Independent Persons eg: a common Job Description, policy on payments, appointment process etc. – Any volunteers?*

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