



Date: **23 August 2022**
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CONSTITUTIONAL REVIEW WORKING PARTY

1 SEPTEMBER 2022

A meeting of the Constitutional Review Working Party will be held at **7.00 pm on Thursday, 1 September 2022** in the Council Chamber, Cecil Street, Margate, Kent.

Membership:

Independent Members: Peter Tucker (Chair)

Councillors: Ashbee, Austin, Hopkinson, Hart and Potts

A G E N D A

Item
No

Subject

1. **APOLOGIES FOR ABSENCE**

2. **DECLARATIONS OF INTEREST** (Pages 3 - 4)

To receive any declarations of interest. Members are advised to consider the advice contained within the Declaration of Interest advice attached to this Agenda. If a Member declares an interest, they should complete the [Declaration of Interest Form](#)

3. **MINUTES OF PREVIOUS MEETING** (Pages 5 - 8)

To approve the Minutes of the Constitutional Review Working Party meeting held on 23 February 2022, copy attached.

4. **REVISED MEMBERS CODE OF CONDUCT** (Pages 9 - 26)

5. **REVISED COMPLAINTS ARRANGEMENTS** (Pages 27 - 74)

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Do I have a Disclosable Pecuniary Interest and if so what action should I take?

Your Disclosable Pecuniary Interests (DPI) are those interests that are, or should be, listed on your Register of Interest Form.

If you are at a meeting and the subject relating to one of your DPIs is to be discussed, in so far as you are aware of the DPI, you **must** declare the existence **and** explain the nature of the DPI during the declarations of interest agenda item, at the commencement of the item under discussion, or when the interest has become apparent

Once you have declared that you have a DPI (unless you have been granted a dispensation by the Standards Committee or the Monitoring Officer, for which you will have applied to the Monitoring Officer prior to the meeting) you **must**:-

1. Not speak or vote on the matter;
2. Withdraw from the meeting room during the consideration of the matter;
3. Not seek to improperly influence the decision on the matter.

Do I have a significant interest and if so what action should I take?

A significant interest is an interest (other than a DPI or an interest in an Authority Function) which:

1. Affects the financial position of yourself and/or an associated person; or
Relates to the determination of your application for any approval, consent, licence, permission or registration made by, or on your behalf of, you and/or an associated person;
2. And which, in either case, a member of the public with knowledge of the relevant facts would reasonably regard as being so significant that it is likely to prejudice your judgment of the public interest.

An associated person is defined as:

- A family member or any other person with whom you have a close association, including your spouse, civil partner, or somebody with whom you are living as a husband or wife, or as if you are civil partners; or
- 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; or
- Any person or body in whom such persons have a beneficial interest in a class of securities exceeding the nominal value of £25,000;
- Any body of which you are in a position of general control or management and to which you are appointed or nominated by the Authority; or
- any body in respect of which you are in a position of general control or management and which:
 - exercises functions of a public nature; or
 - is directed to charitable purposes; or
 - has as its principal purpose or one of its principal purposes the influence of public opinion or policy (including any political party or trade union)

An Authority Function is defined as: -

- Housing - where you are a tenant of the Council provided that those functions do not relate particularly to your tenancy or lease; or
- Any allowance, payment or indemnity given to members of the Council;
- Any ceremonial honour given to members of the Council
- Setting the Council Tax or a precept under the Local Government Finance Act 1992



If you are at a meeting and you think that you have a significant interest then you **must** declare the existence **and** nature of the significant interest at the commencement of the matter, or when the interest has become apparent, or the declarations of interest agenda item.

Once you have declared that you have a significant interest (unless you have been granted a dispensation by the Standards Committee or the Monitoring Officer, for which you will have applied to the Monitoring Officer prior to the meeting) you **must:-**

1. Not speak or vote (unless the public have speaking rights, or you are present to make representations, answer questions or to give evidence relating to the business being discussed in which case you can speak only)
2. Withdraw from the meeting during consideration of the matter or immediately after speaking.
3. Not seek to improperly influence the decision.

Gifts, Benefits and Hospitality

Councillors must declare at meetings any gift, benefit or hospitality with an estimated value (or cumulative value if a series of gifts etc.) of £25 or more. You **must**, at the commencement of the meeting or when the interest becomes apparent, disclose the existence and nature of the gift, benefit or hospitality, the identity of the donor and how the business under consideration relates to that person or body. However you can stay in the meeting unless it constitutes a significant interest, in which case it should be declared as outlined above.

What if I am unsure?

If you are in any doubt, Members are strongly advised to seek advice from the Monitoring Officer or the Committee Services Manager well in advance of the meeting.

If you need to declare an interest then please complete the declaration of [interest form](#).

CONSTITUTIONAL REVIEW WORKING PARTY

Minutes of the meeting held on 23 February 2022 at 2.00 pm in Council Chamber, Cecil Street, Margate, Kent.

Present: Mr Peter Tucker (Chair); Councillors Ashbee, Hopkinson and Rusiecki

1. APOLOGIES FOR ABSENCE

Apologies were received from Councillor Hart

2. DECLARATIONS OF INTEREST

There were no declarations of interest.

3. MINUTES OF PREVIOUS MEETING

The Chair proposed, Councillor Rusiecki seconded and the Working Party agreed that the minutes of the meeting held on 11 November 2021 were a correct record.

4. REVISION TO DELEGATIONS

Mr Hughes, Committee Services Manager, introduced the item noting that currently there was a requirement for full Council to meet in order to formally declare a vacancy when a Member was disqualified from office.

The Council did not have any discretion on whether or not to declare a vacancy as it was a requirement of the law, therefore it was suggested that this function be delegated to the Chief Executive in order to make the process more efficient both for the Council, and for the disqualified individual.

During discussion of the item it was noted that:

- The Chief Executive would be expected to declare the vacancy as soon as possible after a disqualification had been established.
- It was unusual that the existing system required Members to vote to declare a vacancy when there was no alternative option to be chosen, the only lawful course of action was to agree to declare a vacancy.

Councillor Ashbee proposed, Councillor Rusiecki seconded and the Working Party agreed the recommendation within the report, namely:

'That CRWP recommends to the Standards Committee that Council amends its scheme of delegations by delegating to the Chief Executive (and in her absence the Director of Democracy and Law) the authority to declare vacancies in office under section 86 of the Local Government Act 1972.'

5. AMENDMENTS TO THE LEADERS REPORT

Mr Hughes introduced the report, noting that Officers had been asked to bring a report to the Working Party to allow Members to review the rules governing the Leader's report.

During consideration of the item it was noted that:

- The Leader felt she would be able to offer a more accurate and wide-ranging leaders report if the other group leaders were required to submit their responses

to the Report in advance of the meeting. This would give her the opportunity to fully research the answers to any questions raised, rather than relying upon her memory in the spur of the moment, which could be less accurate.

- The Leader suggested that another alternative could be that the Report did not need to be shared in advance of the meeting. She felt that this alternative would make the situation fairer, and was how the Report had been presented in the past.
- There was democratic value in the Leader not receiving the questions in advance, as it held the Leader to account.
- Scripted answers were less engaging for the public.
- Officers could not be called upon to assist Members in answering questions at full Council meetings; it was a debating chamber reserved for Councillors.
- If a newsworthy event occurred following the submission of the Report, the Leader could contact the Chair and ask for permission to include it in the Report.

It was proposed by Councillor Rusiecki, seconded by the Chair and agreed that the recommendation in the report be approved, namely:

'That CRWP recommends to the Standards Committee that Council make the amendments to Council Procedure Rule 2.4 regarding the Leader's Report as outlined in Annex 1 to the report.'

6. **MEMBERS' QUESTIONS**

Ms Culligan, Director of Law and Democracy, introduced the report to consider a revision of the rules for Member questions to Council. It was noted that this only related to questions from Members, in relation to procedure rules 14.6 and 14.8. There were no specific recommendations in the report, instead, this was an opportunity for the Working Party to look at the process and make any recommendations that it felt would be appropriate.

During consideration of the item it was noted that:

- While it was understood that Council should work at a high strategic level, sometimes Members asked straightforward operational matter questions because they could receive a quicker response than by going to a Service Director.
- A Members Portal was being designed to help Members log and monitor operational enquiries. This could negate the need to amend the constitution. The issue of operational questions at Council would be reviewed in six months time, once the Portal was in place
- An operational question should only reach Full Council if the proper process had been followed without success. It should be a last resort because the task of preparing responses to questions asked at full Council meetings was resource intensive and involved senior council officers.
- The opportunity to ask a supplemental question should not be used as a chance to make a political statement, it should be used solely to ask a question arising from the response to the question.
- The Leader and Cabinet Members were available to help all Members regardless of political party. Members were encouraged to get in touch if there was an operational matter that a Cabinet Member could help with.

It was proposed by Councillor Hopkinson, seconded by Councillor Rusiecki and agreed that the Working Party recommend the following amendments are considered by the Standards Committee:

Council Procedure Rule 14.6

- There would be no restriction on questions relating to straight forward operational matters at this time. This would be reviewed in six months, following the implementation of the Members Portal.

- That the bullet point '*related to a matter which has already been raised as a Standards Complaint against a member and which has not yet been concluded through the Code of Conduct procedures.*' be added to the list of reasons that would invalidate a question.

Council Procedure Rule 14.8

- That the following sentence be added at the end of the existing paragraph: '*The question must be a question and not a statement, and rise directly out of the response.*'

Meeting concluded : 3.20 pm

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AMENDMENTS TO THE COUNCILLOR CODE OF CONDUCT

CRWP	1 September 2022
Report Author	Democratic Services Manager
Portfolio Holder	Leader of the Council, Cllr Ash Ashbee
Status	For Recommendation
Classification:	Unrestricted
Ward:	All

Executive Summary:

TDC's Councillor Code of Conduct is based on the "Kent Code of Conduct". This is a model code of conduct that is broadly similar across the County in order to maintain a similar level of standards amongst Councillors. The Local Government Association has published a new model code of conduct and the Kent Secretaries group who are responsible for creating and maintaining the Kent Code of Conduct have undertaken an exercise to update and incorporate the new model code with the Kent code of conduct.

This report outlines the changes proposed and gives The Constitutional Review Working Party the chance to make any recommendations to the Standards Committee regarding the proposed changes.

Recommendation(s):

To make any recommendations to the Standards Committee regarding the amended Councillor code of conduct.

Corporate Implications

Financial and Value for Money

There are no financial implications arising directly from this report.

Legal

The legal implications are outlined throughout the report.

Risk Management

Not having an up to date Code of Conduct is a risk, as new ways of communication emerge, particularly through the increased use of social media it is important that the code of conduct governing member behaviour keeps up with such changes. Without such changes behaviour that could be seen to be below acceptable standards could potentially not be within the scope of the code. In addition, regular updating allows the code of conduct to be

incrementally adjusted to take into account situations or occasions where the code has not covered certain issues or sets of circumstances.

Corporate

An up to date and robust Councillor code of conduct is important as it allows for clear rules for Councillors to adhere to and gives clear indications to the wider public on what constitutes acceptable behaviour from their elected representatives.

Equality Act 2010 & Public Sector Equality Duty

Members are reminded of the requirement, under the Public Sector Equality Duty (section 149 of the Equality Act 2010) to have due regard to the aims of the Duty at the time the decision is taken.

The aims of the Duty are:

- (i) eliminate unlawful discrimination, harassment, victimisation and other conduct prohibited by the Act,
- (ii) advance equality of opportunity between people who share a protected characteristic and people who do not share it, and
- (iii) foster good relations between people who share a protected characteristic and people who do not share it.

Protected characteristics: age, sex, disability, race, sexual orientation, gender reassignment, religion or belief and pregnancy & maternity. Only aim (i) of the Duty applies to Marriage & civil partnership.

This report relates to the following aims of the equality duty: -

- To eliminate unlawful discrimination, harassment, victimisation and other conduct prohibited by the Act.
- To advance equality of opportunity between people who share a protected characteristic and people who do not share it
- To foster good relations between people who share a protected characteristic and people who do not share it.

Corporate Priorities

This report relates to the following corporate priorities: -

- Communities

1.0 Introduction and Background

- 1.1 TDC's Councillor Code of Conduct is based on the "Kent Code of Conduct". This is a model code of conduct that is broadly similar across the County in order to maintain a similar level of standards amongst Councillors. The Kent Code was created and is maintained by the Kent Secretaries group, which consists of all of the Council Monitoring Officers from all the Districts in Kent as well as KCC. The Kent code was originally based on the original Model Code of conduct created after the introduction of the Localism Act 2011.

- 1.2 The Local Government Association produced a new model code of conduct for Councillors in 2021, the LGA Model Councillor Code of Conduct was the product of a significant independent piece of work that was commissioned by the LGA. The LGA hopes that the Model Code will be helpful to local authorities in the area of ethical standards and enhance a more consistent approach nationally. As a result the Kent Secretaries undertook a review of the Kent Code as well as the accompanying procedures for dealing with complaints and holding hearings.
- 1.3 This report presents the amended code of conduct, for consideration by the CRWP and for the Panel to make any recommendations to the Standards Committee.

2.0 Councillor Code of Conduct

- 2.1 The main changes to the existing code are outlined in the table below and are highlighted in the amended code as set out at Annex 1 to the report.

Provision	Current TDC code of Conduct	Amended code of conduct	Reasoning
Change to Preamble	"The Code applies to you as a Member or Co-opted Member of the Thanet District Council when acting, claiming to act or giving the impression that you are acting in that capacity"	The Code of Conduct that follows is adopted under section 27(2) of the Localism Act 2011.	When the code applies is covered within the paragraph on scope and is therefore not needed again at this point.
Taking part in discussions	None	Take any step in relation to a matter being dealt with by you acting alone in the course of discharging a function of the Authority, except a step for the purpose of enabling the matter to be dealt with otherwise than by you.	This change expands out when to declare an interest as previously theoretically you could take an individual decision without needing to declare an interest as there was no vote on the matter.
Other significant interests	None	(a) may reasonably be regarded as affecting the financial position of yourself and/or an Associated Person to a greater extent than the majority of: (i) other council tax payers, ratepayers or inhabitants of the electoral division or	Amended so that OSI's are now only for things that affect you as a Councillor more so than others. This should lessen the number of OSI's that would be declared.

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		ward, as the case may be, affected by the decision; or (ii) (in other cases) other council tax payers, ratepayers or inhabitants of the Authority's area;	
Social Media	None	This Code applies to all forms of communication and interaction including social media.	The previous code was not explicitly clear on whether social media use was included.
Definition of bullying	None	The Advisory, Conciliation and Arbitration Service (ACAS) characterises bullying as offensive, intimidating, malicious or insulting behaviour, an abuse or misuse of power through means that undermine, humiliate, denigrate or injure the recipient. Their website contains examples; harassment will have the meaning set out in The Protection from Harassment Act 1997 and other relevant legislation.	There was no previous definition of bullying. This lead some types of behaviour not being classed as bullying within the code.
Code of conduct training and use of non training as a defence	None	(3) Where you have not undertaken training relating to conduct matters, you shall not be able to use this as a defence where a complaint has been made. (4) You must cooperate with any Code of Conduct investigation and/or determination	Previously some councillors (not in this authority) had used not having training as a defence during standards hearings
Limit on Gifts and Hospitality	You must, before the end of 28 days beginning with the day of receipt/acceptance, notify the Monitoring Officer of any gift, benefit or hospitality with an estimated value of £25 or	You must, before the end of 28 days beginning with the day of receipt/acceptance, notify the Monitoring Officer of any gift,	TDC has always traditionally had a lower declaration limit than other Councils in Kent. Members may wish

	more, or a series of gifts, benefits and hospitality from the same or an associated source, with an estimated cumulative value of £25 or more,	benefit or hospitality with an estimated value of £100 or more, or a series of gifts, benefits and hospitality from the same or an associated source, with an estimated cumulative value of £100 or more,	to continue with the lower amount.
Definition of Antisemitism	On the 27 February 2020 the Council adopted the following definition of antisemitism: Antisemitism is a certain perception of Jews, which may be expressed as hatred toward Jews. Rhetorical and physical manifestations of antisemitism are directed toward Jewish or non-Jewish individuals and/or their property, toward Jewish community institutions and religious facilities	None	TDC included a definition of antisemitism in its code of conduct. It is not included in the new code. Members may wish to retain the definition in the amended code.

2.2 The Kent Code created by the Kent Secretaries group is based on the LGA model code of conduct; that code was the product of an extensive review informed by experienced external consultants Hoey Ainscough Associates. There was extensive consultation with elected members from across the country during the development of LGA code (including with representatives from TDC).

2.3 The LGA will also produce periodic guidance to assist local authorities with the interpretation of their Model Code of Conduct. The guidance is likely to be more directly relevant and easily integrated if we have adopted the Kent Code, which is based on the LGA Model Code of Conduct.

2.4 Using the Kent Code allows the council to access the resources of the Kent secretaries group when making amendments such as the ones suggested above, rather than solely falling on the Monitoring Officer of TDC.

3.0 Options

3.1 The CRWP can suggest further amendments to those proposed in the annex. These could be in addition to those suggested or amendments to the suggested changes.

3.2 The CRWP could suggest not making any amendments, however this is not recommended as it would mean that TDC had moved away from the wider Kent code and the LGA model code of conduct.

4.0 Next Steps

- 4.1 Any recommendations from the CRWP will be considered by the Standards Committee and in turn will be presented to the Full Council for consideration.

Contact Officer: Nicholas Hughes (Committee Services Manager)

Reporting to: Sameera Khan (Interim Head of Legal & Monitoring Officer)

Annex List

Annex 1 - Amended members code of conduct.

Background Papers

None

Corporate Consultation

Finance: Matthew Sanham (Financial Services Manager)

Legal: Sameera Khan (Interim Head of Legal & Monitoring Officer)

Thanet District Council Kent Code of Conduct for Members

Preamble

- (A) The Code of Conduct that follows is adopted under section 27(2) of the Localism Act 2011.
- (B) The Code is based on the Seven Principles of Public Life under section 28(1) of the Localism Act 2011, which are set out in Annex 1.
- (C) This Preamble and Annex 1 do not form part of the Code, but you should have regard to them as they will help you to comply with the Code.
- (D) If you need guidance on any matter under the Code, you should seek it from the Monitoring Officer or your own legal adviser – but it is entirely your responsibility to comply with the provisions of this Code.
- (E) In accordance with section 34 of the Localism Act 2011, where you have a Disclosable Pecuniary Interest it is a criminal offence if, without reasonable excuse, you:
 - (a) Fail to notify the authority's Monitoring Officer of the interest before the end of 28 days beginning with the day on which you became a member.
 - (b) Fail to disclose the interest at meetings where the interest is not entered in the authority's register.
 - (c) Fail to notify the authority's Monitoring Officer of the interest before the end of 28 days beginning with the date of disclosure at a meeting, if the interest is not entered in the authority's register and is not the subject of a pending notification.
 - (d) Take part in discussion or votes, or further discussions or votes, at meetings on matters in which you have the interest which are being considered at the meeting.
 - (e) Fail to notify the authority's Monitoring Officer of the interest before the end of 28 days beginning with the date when you become aware that you have such an interest in a matter to be dealt with, or being dealt with, by you acting alone in the course of discharging a function of the authority.
 - (f) Take any step in relation to a matter being dealt with by you acting alone in the course of discharging a function of the Authority, except a step for the purpose of enabling the matter to be dealt with otherwise than by you.
 - (g) knowingly or recklessly provide false or misleading information in any of the above disclosures or notifications.
- (F) Any written allegation received by the Authority that you have failed to comply with the Code will be dealt with under the arrangements adopted by the Authority for such purposes. If it is found that you have failed to comply with the Code, the Authority may have regard to this failure in deciding whether to take action and, if so, what action to take in relation to you.

THE CODE

1. Interpretation

In this Code:

"Associated Person" means (either in the singular or in the plural):

- (a) a family member or any other person or body with whom you have a close association, including your spouse, civil partner, or somebody with whom you are living as a husband or wife, or as if you are civil partners; or
- (b) any person or body who employs or has appointed you or such persons, any firm in which you or they are a partner, or any company of which you or they are directors; or
- (c) any person or body in whom you or such persons have a beneficial interest in a class of securities exceeding the nominal value of £25,000; or
- (d) any body of which you are in a position of general control or management and to which you are appointed or nominated by the Authority; or
- (e) any body in respect of which you are in a position of general control or management:
 - (i) exercising functions of a public nature; or
 - (ii) directed to charitable purposes; or
 - (iii) one of whose principal purposes includes the influence of public opinion or policy (including any political party or trade union).

"Authority" means *{insert name}* Council.

"Authority Function" means any one or more of the following interests that relate to the functions of the Authority:

- (a) housing - where you are a tenant of the Authority provided that those functions do not relate particularly to your tenancy or lease; or
- (b) 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 your child attends;
- (c) 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;
- (d) an allowance, payment or indemnity given to members of the Authority;
- (e) any ceremonial honour given to members of the Authority;
- (f) setting council tax or a precept under the Local Government Finance Act 1992.

"Code" means this Code of Conduct.

"Co-opted Member" means a person who is not an elected member of the Authority but who is a member of:

- (a) any committee or sub-committee of the Authority, or
- (b) and represents the Authority on, any joint committee or joint sub-committee of the Authority; and
- (c) who is entitled to vote on any question that falls to be decided at any Meeting.

"Disclosable Pecuniary Interest" means those interests of a description specified in regulations made by the Secretary of State (as amended from time to time) as set out in Annex 2 and where either it is:

- (a) your interest or
- (b) an interest of your spouse or civil partner, a person with whom you are living as husband and wife, or a person with whom you are living as if you were civil partners and provided you are aware that the other person has the interest.

"Interests" means Disclosable Pecuniary Interests and Other Significant Interests.

"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 and/or joint sub-committees.

"Member" means a person who is a member of the Authority and includes a Co-opted Member.

"Other Significant Interest" means an interest (other than a Disclosable Pecuniary Interest or an interest in an Authority Function) in any business of the Authority which:

- (a) may reasonably be regarded as affecting the financial position of yourself and/or an Associated Person **to a greater extent than the majority of:**
 - (i) 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 other cases) other council tax payers, ratepayers or inhabitants of the Authority's area; or
- (b) relates to the determination of your application (whether made by you alone or jointly or on your behalf) for any approval, consent, licence, permission or registration or that of an Associated Person;

and where, in either case, a member of the public with knowledge of the relevant facts would reasonably regard the interest as being so significant that it is likely to prejudice your judgement of the public interest.

"Register of Members' Interests" means the Authority's register of Disclosable Pecuniary Interests established and maintained by the Monitoring Officer under section 29 of the Localism Act 2011.

"Sensitive Interest" means information, the details of which, if disclosed, could lead to you or a person connected with you being subject to violence or intimidation.

Scope

- 2. (1) You must comply with this Code whenever you act in your official capacity as a Member or Co-opted Member of the Authority.
- (2) This Code applies to all forms of communication and interaction including social media.

General obligations

3. (1) You must, when using or authorising the use by others of the resources of the Authority:
- (a) act in accordance with the Authority's reasonable requirements; and
 - (b) ensure that such resources are not used improperly for political purposes (including party political purposes).
- (2) You must not:
- (a) bully any person or carry out any act of harassment. For the purposes of this paragraph bullying and harassment shall be construed as follows:-
 - (i) the Advisory, Conciliation and Arbitration Service (ACAS) characterises bullying as offensive, intimidating, malicious or insulting behaviour, an abuse or misuse of power through means that undermine, humiliate, denigrate or injure the recipient. Their website contains examples;
 - (ii) harassment will be have the meaning set out in The Protection from Harassment Act 1997 and other relevant legislation.
 - (b) intimidate or attempt to intimidate any person who is or is likely to be a complainant, a witness, or involved in the administration of any investigation or proceedings, in relation to an allegation that a Member (including yourself) has failed to comply with this Code;
 - (c) do anything that compromises, or is likely to compromise, the impartiality or integrity of those who work for, or on behalf of, the Authority;
 - (d) 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 written consent of a person authorised to give it; or
 - (ii) you are required by law to do so; or
 - (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:
 - reasonable and in the public interest; and
 - made in good faith and in compliance with the reasonable requirements of the Authority;
 - (e) disclose information which is exempt information within the meaning of Part VA Local Government Act 1972 or The Local Authorities (Executive Arrangements) (Meetings and Access to Information) (England) Regulations 2012;
 - (f) prevent another person from gaining access to information to which that person is entitled by law;
 - (g) conduct yourself in a manner which could reasonably be regarded as bringing your office or the Authority into disrepute;

- (h) 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.

(3) Where you have not undertaken training relating to conduct matters, you shall not be able to use this as a defence where a complaint has been made.

(4) You must cooperate with any Code of Conduct investigation and/or determination

Registering Disclosable Pecuniary Interests

4. (1) You must, before the end of 28 days beginning with the day you become a Member or Co-opted Member of the Authority, or before the end of 28 days beginning with the day on which this Code takes effect (whichever is the later), notify the Monitoring Officer of any Disclosable Pecuniary Interest.
- (2) In addition, you must, before the end of 28 days beginning with the day you become aware of any new Disclosable Pecuniary Interest or change to any interest already registered, register details of that new interest or change, by providing written notification to the Monitoring Officer.
- (3) Where you have a Disclosable Pecuniary Interest in any matter to be dealt with, or being dealt with, by you acting alone in the course of discharging a function of the Authority (including making a decision in relation to the matter), then if the interest is not registered in the Register of Members' Interests and is not the subject of a pending notification, you must notify the Monitoring Officer before the end of 28 days beginning with the day you become aware of the existence of the interest.

Declaring Interests

5. (1) Whether or not a Disclosable Pecuniary Interest has been entered onto the Register of Members' Interests or is the subject of a pending notification, you must comply with the disclosure procedures set out below.
- (2) Where you are present at a Meeting and have a Disclosable Pecuniary Interest or Other Significant Interest in any matter to be considered, or being considered, at the Meeting, you must:
 - (a) disclose the Interest; and
 - (b) explain the nature of that Interest at the commencement of that consideration or when the Interest becomes apparent (subject to paragraph 6, below); and unless you have been granted a dispensation or are acting under paragraph 5(4):
 - (c) not participate in any discussion of, or vote taken on, the matter at the Meeting; and
 - (d) withdraw from the Meeting room in accordance with the Authority's Procedure Rules whenever it becomes apparent that the business is being considered; and
 - (e) not seek improperly to influence a decision about that business.
- (3) Where you have a Disclosable Pecuniary Interest or Other Significant Interest in any business of the Authority where you are acting alone in the course of

discharging a function of the Authority (including making an executive decision), you must:

- (a) notify the Monitoring Officer of the interest and its nature as soon as it becomes apparent; and
 - (b) not take any steps, or any further steps, in relation to the matter except for the purpose of enabling the matter to be dealt with otherwise than by you; and
 - (c) not seek improperly to influence a decision about the matter.
- (4) Where you have an Other Significant Interest in any business of the 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. Having made your representations, given evidence or answered questions you must:
- (a) not participate in any discussion of, or vote taken on, the matter at the Meeting; and
 - (b) withdraw from the Meeting room in accordance with the Authority's Procedure Rules.

Sensitive Interests

6. (1) Where you consider that the information relating to any of your Disclosable Pecuniary Interests is a Sensitive Interest, and the Monitoring Officer agrees, the Monitoring Officer will not include details of the Sensitive Interest on any copies of the Register of Members' Interests which are made available for inspection or any published version of the Register, but may include a statement that you have an interest, the details of which are withheld under this paragraph.
- (2) You must, before the end of 28 days beginning with the day you become aware of any change of circumstances which means that information excluded under paragraph 6(1) is no longer a Sensitive Interest, notify the Monitoring Officer asking that the information be included in the Register of Members' Interests.
- (3) The rules relating to disclosure of Interests in paragraphs 5(2) and (3) will apply, save that you will not be required to disclose the nature of the Sensitive Interest, but merely the fact that you hold an interest in the matter under discussion.

Gifts and Hospitality

7. (1) You must, before the end of 28 days beginning with the day of receipt/acceptance, notify the Monitoring Officer of any gift, benefit or hospitality with an estimated value of £100 or more, or a series of gifts, benefits and hospitality from the same or an associated source, with an estimated cumulative value of £100 or more, which are received and accepted by you (in any one calendar year) in the conduct of the business of the Authority, the business of the office to which you have been elected or appointed or when you are acting as representative of the Authority. You must also register the source of the gift, benefit or hospitality.

- (2) Where any gift, benefit or hospitality you have received or accepted relates to any matter to be considered, or being considered at a Meeting, you must disclose at the commencement of the Meeting or when the interest becomes apparent, the existence and nature of the gift, benefit or hospitality, the person or body who gave it to you and how the business under consideration relates to that person or body. You may participate in the discussion of the matter and in any vote taken on the matter, unless you have an Other Significant Interest, in which case the procedure in paragraph 5 above will apply.
- (3) You must continue to disclose the existence and nature of the gift, benefit or hospitality at a relevant Meeting, for 3 years from the date you first registered the gift, benefit or hospitality.
- (4) The duty to notify the Monitoring Officer does not apply where the gift, benefit or hospitality comes within any description approved by the Authority for this purpose.

Dispensations

8. (1) The *[Standards]* Committee, or any sub-committee of the *[Standards]* Committee, or the Monitoring Officer (where authorised) may, on a written request made to the Monitoring Officer (as appointed Proper Officer for the receipt of applications for dispensation) by a Member with an Interest, grant a dispensation relieving the Member from either or both of the restrictions on participating in discussions and in voting (referred to in paragraph 5 above).
- (2) A dispensation may be granted only if, after having had regard to all relevant circumstances, the *[Standards]* Committee, its sub-committee, or the Monitoring Officer (where authorised) considers that:
 - (a) without the dispensation the number of persons prohibited from participating in any particular business would be so great a proportion of the body transacting the business as to impede the transaction of the business; or
 - (b) without the dispensation, the representation of different political groups on the body transacting any particular business would be so upset as to alter the likely outcome of any vote relating to the business; or
 - (c) granting the dispensation is in the interests of persons living in the Authority's area; or
 - (d) without the dispensation each member of the Authority's executive would be prohibited from participating in any particular business to be transacted by the Authority's executive; or
 - (e) it is otherwise appropriate to grant a dispensation.
- (3) A dispensation must specify the period for which it has effect, and the period specified may not exceed four years.
- (4) Paragraph 5 above does not apply in relation to anything done for the purpose of deciding whether to grant a dispensation under this paragraph 8.

9.0 Antisemitism

- 9.1 On the 27 February 2020 the Council adopted the following definition of antisemitism: Antisemitism is a certain perception of Jews, which may be expressed as hatred toward Jews. Rhetorical and physical manifestations of antisemitism are directed toward Jewish or non-Jewish individuals and/or their property, toward Jewish community institutions and religious facilities.
- 9.2 More information on the application of the above definition and working examples can be found at the International Holocaust Remembrance Alliance website: <https://www.holocaustremembrance.com/working-definition-antisemitism>

ANNEX 1

THE SEVEN PRINCIPLES OF PUBLIC LIFE

In accordance with the Localism Act 2011, and in order to help maintain public confidence in this Authority, you are committed to behaving in a manner that is consistent with the following principles. However, it should be noted that these Principles do not create statutory obligations for Members and do not form part of the Code. It follows from this that the Authority cannot accept allegations that they have been breached. The definitions of the Principles are as below, or as set out on the website of the Committee on Standards in Public Life.

SELFLESSNESS: Holders of public office should act solely in terms of the public interest.

INTEGRITY: Holders of public office must avoid placing themselves under any obligation to people or organisations that might try inappropriately to influence them in their work. They should not act or take decisions in order to gain financial or other material benefits for themselves, their family, or their friends. They must disclose and resolve any interests and relationships.

OBJECTIVITY: Holders of public office must act and take decisions impartially, fairly and on merit, using the best evidence and without discrimination or bias.

ACCOUNTABILITY: Holders of public office are accountable to the public for their decisions and actions and must submit themselves to the scrutiny necessary to ensure this.

OPENNESS: Holders of public office should act and take decisions in an open and transparent manner. Information should not be withheld from the public unless there are clear and lawful reasons for so doing.

HONESTY: Holders of public office should be truthful.

LEADERSHIP: Holders of public office should exhibit these principles in their own behaviour. They should actively promote and robustly support the principles and be willing to challenge poor behaviour wherever it occurs.

ANNEX 2

Disclosable Pecuniary Interests, as prescribed by regulations, are as follows:

The descriptions on Disclosable Pecuniary Interests are subject to the following definitions:

"the Act" means the Localism Act 2011

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

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

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

"M" means a member of the relevant authority

"member" includes a co-opted member

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

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

"relevant person" means M or any other person referred to in section 30(3)(b) of the Act (the Member's spouse, civil partner, or somebody with whom they are living as a husband or wife, or as if they were civil partners).

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

Interest	Description
Employment, office, trade, profession or vacation	Any employment, office, trade, profession or vocation carried on for profit or gain.
Sponsorship	Any payment or provision of any other financial benefit (other than from the relevant authority) made or provided within the relevant period in respect of any expenses incurred by M in carrying out duties as a member, or towards the election expenses of M. This includes any payment or financial benefit from a trade union within the meaning of the Trade Union and Labour Relations (Consolidation) Act 1992.
Contracts	Any contract which is made between the relevant person (or a body in which the relevant person has a beneficial interest) and the relevant authority: (a) under which goods or services are to be provided or works are to be executed; and (b) which has not been fully discharged.

Interest	Description
Land	Any beneficial interest in land which is within the area of the relevant authority.
Licences	Any licence (alone or jointly with others) to occupy land in the area of the relevant authority for a month or longer.
Corporate tenancies	Any tenancy where (to M's knowledge): (a) the landlord is the relevant authority; and (b) the tenant is a body in which the relevant person has a beneficial interest.
Securities	Any beneficial interest in securities of a body where: (a) that body (to M's knowledge) has a place of business or land in the area of the relevant authority; and (b) either (i) the total nominal value of the securities exceeds £25,000 or one hundredth of the total issued share capital of that body; or (ii) if the share capital of that body is of more than one class, the total nominal value of the shares of any one class in which the relevant person has a beneficial interest exceeds one hundredth of the total issued share capital of that class.

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REVISED COUNCILLOR COMPLAINT HANDLING ARRANGEMENTS

CRWP	1 September 2022
Report Author	Committee Services Manager
Portfolio Holder	Leader of the Council, Cllr Ash Ashbee
Status	For Recommendation
Classification:	Unrestricted
Ward:	All

Executive Summary:

This report asks the Constitutional Review Working Party to consider the suggested changes to the current Councillor complaints handling arrangements as a result of their review by the Kent Secretaries group. All of the changes are outlined in paragraph 2.0 of the report. The changes can be amended further by the Constitutional Review Working Party (CRWP) or they can remain as they are laid out within the report. CRWP can then make recommendations to the Standards Committee relating to the amendments made.

Recommendation(s):

To make any recommendations to the Standards Committee regarding the amended Standards Complaint handling arrangements.

Corporate Implications

Financial and Value for Money

There are no financial implications arising directly from this report.

Legal

The legal implications are outlined throughout the report.

Risk Management

Submitting a complaint against a Councillor or being the subject of one can be a very stressful situation. By ensuring that the Council's processes and procedures for dealing complaints are as robust, efficient and transparent as possible is important, as it can reduce the stress of the whole process. If the process is not transparent, inefficient and not timely then there is a significant risk of reputational damage to the Council and the entire standards process can be seen to undermined.

Corporate

An up to date and robust Councillor code of conduct is important as it allows for clear rules for Councillors to adhere to and gives clear indications to the wider public on what constitutes acceptable behaviour from their elected representatives.

Equality Act 2010 & Public Sector Equality Duty

Members are reminded of the requirement, under the Public Sector Equality Duty (section 149 of the Equality Act 2010) to have due regard to the aims of the Duty at the time the decision is taken. The aims of the Duty are: (i) eliminate unlawful discrimination, harassment, victimisation and other conduct prohibited by the Act, (ii) advance equality of opportunity between people who share a protected characteristic and people who do not share it, and (iii) foster good relations between people who share a protected characteristic and people who do not share it.

Protected characteristics: age, sex, disability, race, sexual orientation, gender reassignment, religion or belief and pregnancy & maternity. Only aim (i) of the Duty applies to Marriage & civil partnership.

This report relates to the following aim of the equality duty: -

- To eliminate unlawful discrimination, harassment, victimisation and other conduct prohibited by the Act.
- To advance equality of opportunity between people who share a protected characteristic and people who do not share it
- To foster good relations between people who share a protected characteristic and people who do not share it.

Corporate Priorities

This report relates to the following corporate priorities: -

- Communities

1.0 Introduction and Background

1.1 TDC's Councillor Code of Conduct is based on the "Kent Code of Conduct". This is a model code of conduct that is broadly similar across the County in order to maintain a similar level of standards amongst Councillors. The Kent Code was created and is maintained by the Kent Secretaries group, which consists of all of the Council Monitoring Officers from all the Districts in Kent as well as KCC. The Kent Secretaries group created a series of procedures based on those that were created with the original model code of conduct created after the introduction of the Localism Act 2011.

1.2 The Local Government Association produced a new model code of conduct for Councillors in 2021 and Kent Secretaries then updated the "Kent Code of Conduct" to reflect these changes - this piece of work is extensively covered elsewhere in this agenda. Further to that piece of work, the Kent Secretaries took that opportunity to update the associated processes for receipt and handling of complaints and subsequent hearings. This report outlines those suggested changes.

2.0 Changes to the current procedures

2.1 Arrangements for Dealing With Code of Conduct Complaints Under the Localism Act 2011

2.1.1 The following amendmendments have been proposed by the Kent Secretaries group to the summary document:

Provision	Proposed Amendment	Current Arrangements	Reasoning
Change to Interpretation Paragraph	Delete paragraphs 2.12 and 2.13	<p>2.12 'Standards (Assessment) Sub Committee' means the Sub Committee established by the Standards Committee of the District Council with responsibility for making recommendations to the Monitoring Officer on whether in relation to a complaint alleging a failure by a Subject Member to comply with the requirements of the Members Code of Conduct no further action should be taken in respect of the complaint or whether the informal disputes resolution procedure should be instigated or whether the complaint should be the subject of an investigation.</p> <p>2.13 'Standards (Hearings) Sub Committee' means the Sub Committee established by the Standards Committee of the District Council to conduct a hearing in respect of a complaint against a Subject Member referred to it by the Monitoring Officer</p>	Paragraphs 2.12 and 2.13 are not needed in the summary document as they are extensively covered in the annexes to the document.

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		<p>under these Arrangements and at the conclusion of the hearing and having regard to the opinion of the Independent Person to recommend to the Monitoring Officer whether in the opinion of the Sub Committee there has been a failure by a Subject Member to comply with the Members Code of Conduct and if so, to further recommend what action should be taken in relation to such failure.</p>	
Making a complaint	b) via the Council's website using the on-line complaint form provided there.	None	This clarifies that online forms are acceptable as a way to submit complaints.
Complaint acknowledgement	The Monitoring Officer will normally acknowledge receipt of a complaint within 15 working days of receiving it. At the same time (and subject to paragraph. 4.2 above), the Monitoring Officer will send a copy of the complaint to the Subject Member in accordance with paragraph 1 of Annex 1 to these Arrangements.	The Monitoring Officer will normally acknowledge receipt of a complaint within 5 working days of receiving it. At the same time (and subject to para. 4.2 above), the Monitoring Officer will send a copy of the complaint to the Subject Member in accordance with Paragraph 2 of Annex 2 to these Arrangements.	The current 5 day deadline is considered not achievable in many cases, due to Monitoring Officers being engaged on other matters, or simply being on leave.
Local Assessment Criteria	Delete Paragraphs 9 to 9.4	9. Standards (Assessment) Sub Committee - Local Assessment Criteria.....	Paragraphs 9 to 9.4 are not needed in the summary document as they are extensively covered in the annexes to the document.
Investigation deadline	10.1 If the Monitoring Officer decides that the complaint merits formal investigation, they will, normally within 30 working days of receiving it, appoint an Investigating Officer to undertake the investigation, and inform	If the Monitoring Officer decides that a complaint merits formal investigation, they will, within 10 working days of their decision, appoint an Investigating Officer to undertake the investigation and inform	The current 10 day deadline is considered not achievable in many cases, due to the availability of suitably qualified investigators.

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	the Parties of the appointment.	the Complainant and the Subject Member of the appointment.	
No breach procedure	Delete Paragraph 12 to 14.2	12 Investigating Officer's Opinion - 'No Breach'.....	Paragraphs 12 to 14.2 are not needed in the summary document as they are extensively covered in the annexes to the document.
Discontinuation of Action	14.1 In the event that the Subject Member has died, is seriously ill or has ceased to be an elected member or co-opted member of the District/Borough or Parish Council the Monitoring Officer may determine to end the complaints process.	New	There is currently no allowance within the current scheme to end standards complaints due to death or serious illness of the subject member.

2.2 Procedure on Receipt of a Complaint

2.2.1 The following amendmendments have been proposed by the Kent Secretaries group to the summary document:

Provision	Proposed Amendment	Current Arrangements	Reasoning
Notification of Complaint	The Monitoring Officer may invite the Subject Member [and, if applicable, the Parish Clerk] to submit initial views on the complaint, which will be taken into account by the Monitoring Officer when they decide how to deal with the complaint (see paragraph 4 below).	The Monitoring Officer may invite the Subject Member and, where applicable, the Parish Clerk to submit initial views on the complaint within 10 working days, which will be taken into account by the Monitoring Officer when they decide how to deal with the complaint.	The timescale has been removed in order to allow more time to collect views from the subject member, as they may miss out on submitting important information due to unavailability.
Amending the local assessment/legal jurisdiction test	Legal Jurisdiction Test <ul style="list-style-type: none"> Was the person complained of acting in an official capacity at the time of the alleged conduct? If the answer to this is 'No' the test is failed. 	Local Assessment Criteria <ul style="list-style-type: none"> Was the person complained of acting in an official capacity at the time of the alleged conduct? If the answer 	These two criteria were in the wrong section of the procedure.

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	<ul style="list-style-type: none"> Did the alleged conduct occur when the person complained of was acting as a member of another authority? If the answer to this is 'Yes' the test is failed. 	<p>to this is 'No' the test is failed.</p> <ul style="list-style-type: none"> Did the alleged conduct occur when the person complained of was acting as a member of another authority? If the answer to this is 'Yes' the test is failed. 	
Total timescale for complaints	If the complaint fails one or more of the jurisdiction tests, no further action will be taken by the Monitoring Officer and the complaint will be rejected. The Complainant will be notified accordingly with reasons, normally within 60 working days of receipt of the complaint by the Monitoring Officer. There is no right of appeal against the Monitoring Officer's decision.	New	This introduces an aspirational overall timescale for non-valid complaints.
Informal resolution	The Monitoring Officer may at any stage seek to resolve the complaint informally in accordance with paragraph 6 below. Where the Subject Member or the Monitoring Officer or the District or Parish Council make a reasonable offer of informal resolution, but the Complainant is not willing to accept this offer, the Monitoring Officer will take account of this in deciding whether the complaint merits formal investigation.	<p>Where the Subject Member has made a reasonable offer of informal resolution it is more likely that the decision will be to instigate the informal disputes resolution procedure although the seriousness of the complaint and the acceptability of such offer to the Complainant will also be taken into account in making the decision.</p> <p>More information on when it may be appropriate to instigate the informal disputes resolution procedure is given at Paragraph 6 below.</p>	Revised wording.
Overall timescale for dealing with complaints.	Normally within 90 working days of receipt of the complaint, the Monitoring Officer will notify the Complainant, Subject Member [and, if applicable, the Parish Clerk] of their decision and reasons for applying one of the following processes in the	New	This paragraph introduces a new total time target (in days) for dealing with complaints.

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	format of the Decision Notice template (appended to this Annex 1):		
Confidentiality	If the Monitoring Officer decides to refuse the Complainant's request for confidentiality, they will offer the Complainant the option to withdraw their complaint. The Complainant will be notified of the Monitoring Officer's decision, with reasons by the Monitoring Officer. There is no right of appeal against the Monitoring Officer's decision to refuse the Complainant's request for confidentiality.	If the Monitoring Officer decides to refuse the Complainant's request for confidentiality, they will offer the Complainant the option to withdraw their complaint. The Complainant will be notified of the Monitoring Officer's decision, with reasons, within 15 working days of receipt of the complaint by the Monitoring Officer. There is no right of appeal against the Monitoring Officer's decision to refuse the Complainant's request for confidentiality.	This change introduces a 15 day time limit for the Monitoring Officer to inform the complainant of the decision regarding confidentiality. This timescale helps to prevent the process from becoming too elongated.

2.3 Procedure for Investigating the complaint

2.3.1 The following amendments have been proposed by the Kent Secretaries group to the summary document:

Provision	Proposed Amendment	Current Arrangements	Reasoning
Updating relevant laws	The Investigating Officer will be appointed by the Monitoring Officer and will be aware of their obligations under UK GDPR and the Data Protection Act 2018, Equalities Act 2010, the Human Rights Act 1998, and other relevant legislation	New	The laws governing data protection have been updated since the code was first introduced in 2011.
Notification by investigating officer	The Investigating Officer will notify the Subject Member and the Complainant of their appointment, normally within 20 working days of being appointed	Within 10 working days of being appointed, the Investigating Officer will notify the Subject Member and the Complainant of their appointment	The timescale for contacting the subject members and the complainant has been extended to 20 days. This takes into account potential delays in passing on contact details.
Evidence of new	New section covering the	New	This section now

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breaches	discovery of new breaches by the investigating officer		explains what the investigating officer should do if they find evidence of new breaches when undertaking their investigation.
Referring cases back to the Monitoring officer	New Section covering how the Monitoring Officer can end an investigation on the receipt of additional evidence	New	This allows for the early closure of an investigation, when new evidence is received that would render the investigation fruitless to continue. Currently this option doesn't exist and so investigation must continue even when there is no merit in continuing, all the time incurring further expense.
Deferring an investigation	New section covering how an investigation can be deferred.	New	Previously there was no legitimate way of deferring an investigation within the scheme. This section outlines how a deferment can occur.
Consideration of the Final Report	Where, on the basis of the Investigating Officer's report, the Monitoring Officer, having consulted with the Independent Person, concludes that there is evidence of a failure to comply with the Code of Conduct, they will either: <ul style="list-style-type: none"> a) Take no action; or b) Seek informal resolution; or c) Refer the matter for consideration by the Hearing Panel in accordance with the relevant procedure detailed in Annex 3 to these Arrangements. 	Previously the Monitoring Officer could only take no action or refer to the Hearing Panel	By adding informal resolution to the options for the Monitoring Officer, this allows more flexibility where a small breach is found to have occurred. This will allow for a quicker conclusion to complaints and reduced costs where hearings will not be needed for relatively minor breaches of the code.
Confidentiality	7.1 The procedures detailed in this Annex are all treated as confidential to those involved	New	This section has been added to remind those in the process of the

	<p>in the process. Some details (which would include names and addresses) may be personal data, subject to data protection laws, some content of statements or reports may be otherwise private or confidential or, may be potentially defamatory if published.</p> <p>7.2 Whilst non-members are not covered by the Code of Conduct (e.g., members of the public, witnesses and non-councillor complainants) if, they do decide to publish details of the complaint they may expose themselves to liability in defamation (if information turns out to be untrue) or to other liabilities e.g., for breach of confidence, or for breach of data protection laws which could arise even where the information is true.</p> <p>Non-members may wish to seek their own legal advice.</p>		<p>importance of confidentiality to the process.</p>
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2.4 Hearing Panel Procedure

2.4.1 The following amendmendments have been proposed by the Kent Secretaries group to the summary document:

Provision	Proposed Amendment	Current Arrangements	Reasoning
Pre Hearing procedure	<p>In order to allow the hearing to proceed fairly and efficiently, the Monitoring Officer may in appropriate cases use a pre-hearing procedure to identify:</p> <p>(a) Which facts in the investigation report are agreed and which are in dispute.</p> <p>(b) Whether there is fresh evidence not mentioned in the investigation report</p>	New	<p>By introducing a pre-hearing procedure it is hoped that it will bring to light issues before a hearing starts that can cause delay to a hearing or avoid participants questioning the legitimacy of the proceedings.</p>

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	<p>which will be put before the hearing.</p> <p>(c) Whether there is documentary evidence which a party intends to put before the hearing.</p> <p>(d) Whether the parties intend to attend, whether the parties intend to be represented in accordance with paragraph 3 and, if so, by whom, the number and identity of witnesses to be called.</p> <p>(e) Whether the Subject Member requests the whole or any part of the hearing to be held in private.</p> <p>(f) Whether the Subject Member requests the whole or any part of the investigation report or other relevant documents to be withheld from the public.</p>		
<p>Membership of Hearings</p>	<p>The Hearing Panel consists of three voting elected Members drawn from the [Standards Committee], one of whom shall be elected as Chairman.</p> <p>The quorum for a meeting of the Hearing Panel is three elected Members.</p>	<p>Previously one of the Independent Members had to be the Chair of the hearing Panel.</p> <p>TDC currently has a membership of two cllrs and one independent member.</p>	<p>Could reject this one.</p>
<p>Substitution on hearing panels</p>	<p>Once a hearing has started, the District Council's Rules of Substitution do not apply to the Hearing Panel's proceedings.</p>	<p>New - there are no current rules on substitutions</p>	<p>This rule ensure continuity in hearings.</p>
<p>Representation at hearings</p>	<p>The Subject Member may choose to be represented by counsel, a solicitor, or by any other person they wish. The panel does, however, have the right to require a representative to leave if that representative disrupts the hearing. However, an appropriate warning will be given before requiring a representative to leave the hearing.</p>	<p>Currently the scheme is not specific enough to say that a legal representative is allowed to accompany the subject member.</p>	<p>This amendment specifically allows legal representative, however it does also include a clause that allows the Panel the right to remove any representative that disrupts the hearing.</p>

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<p>Introductory statement</p>	<p>The Monitoring Officer, legal advisor, or chairman may make an introductory statement outlining the nature of the complaint and the purpose of the hearing, and the procedure to be followed</p>	<p>New</p>	<p>Having an introductory statement outlining the process and what the complaint being considered is will improve the flow of the hearing and make proceedings easier to understand.</p>
<p>Mitigating and factors</p>	<p>Mitigating factors may include:</p> <ul style="list-style-type: none"> (a) An honestly held, although mistaken, view that the action concerned did not constitute a failure to follow the provisions of the Code of Conduct, particularly where such a view has been formed after taking appropriate advice. (b) A councillor's previous record of good service. (c) Substantiated evidence that the councillor's actions have been affected by ill-health. (d) Recognition that there has been a failure to follow the Code. (e) Co-operation in rectifying the effects of that failure. (f) An apology to affected persons where that is appropriate. (g) Self-reporting of the breach by the councillor. (h) Compliance with the Code since the events giving rise to the complaint. 	<p>New</p>	
<p>Aggravating Factors</p>	<p>Aggravating factors may include:</p> <ul style="list-style-type: none"> (a) Dishonesty or breaches of trust. (b) Trying to gain an advantage or disadvantage for themselves or others. (c) Bullying. (d) Continuing to deny the facts despite clear contrary evidence. (e) Seeking unfairly to blame other people. 	<p>New</p>	

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	<p>(f) Failing to heed appropriate advice or warnings or previous findings of a failure to follow the provisions of the Code.</p> <p>(g) Persisting with a pattern of behaviour which involves repeatedly failing to abide by the provisions of the Code.</p>		
Hearings regarding Parish Councillors	<p>Where the Subject Member is a Parish or Town councillor, the matter is referred back to their Council to say that a breach of the Code has been found and with a recommended sanction. The Town or Parish Council must then meet to consider whether to impose that sanction or to replace it with another relevant sanction. They cannot overturn the finding that there has been a breach of the Code and if they wish to impose a different sanction they should seek advice from the clerk and/or the Monitoring Officer. The panel should also ask the Parish or Council to report back to the monitoring officer within three months to confirm that they have met to discuss the sanction, and if necessary, to write again once the sanction has been fulfilled.</p>	New	<p>This paragraph clarifies that a Parish Council cannot overturn the findings of a hearing panel. It also requires the Parish Council to inform the Monitoring Officer that the Parish Council has met to discuss the sanction within a three month period.</p>
Failure to comply with sanctions	<p>Note that under the Code of Conduct failure to comply with a sanction may of itself be a breach of the Code.</p>	New	<p>It was not previously confirmed in the previous code that non-compliance with sanctions would be a breach of the code. This paragraph clarifies that it would be</p>
Access to Reports.	<p>The panel's reports and minutes should be available for public inspection in the same way as other local authority committee papers.</p>	<p>The legal requirements for publishing agendas, minutes and calling meetings, will apply to the Standards (Hearings) Sub Committee.</p>	<p>The wording is slightly amended, but makes it clearer that the reports and minutes of hearing sub-committees should be in the public domain.</p>

3.0 Options

- 3.1 The CRWP can suggest further amendments to those proposed in the tables shown above. These could be in addition to those suggested or amendments to the suggested changes.
- 3.2 The CRWP could suggest not making any amendments, however this is not recommended as it would mean that TDC had moved away from the wider processes based upon the revised kent code and the LGA model code of conduct.

4.0 Next Steps

- 4.1 Any recommendations from the CRWP will be considered by the Standards Committee and in turn will be presented to the Full Council for consideration.

Contact Officer: Nicholas Hughes (Committee Services Manager)

Reporting to: Sameera Khan (Interim Head of Legal & Monitoring Officer)

Annex List

Annex 1: Arrangements for Dealing With Code of Conduct Complaints Under the Localism Act 2011

Annex 2: Procedure on Receipt of a Complaint

Annex 3: Procedure for Investigating the Complaint

Annex 4: Hearing Panel Procedure

Background Papers

None

Corporate Consultation

Finance: Matthew Sanham (Financial Services Manager)

Legal: Sameera Khan (Interim Head of Legal & Monitoring Officer)

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

1. Context

- 1.1 These Arrangements are made under section 28 of the Localism Act 2011. They set out the process that XXXXX District/Borough Council has adopted for dealing with complaints that an elected or co-opted member or parish/town councillor or co-opted member has failed to comply with the Code of Conduct.

2. Interpretation

- 2.1 District/Borough Council' means XXXX District/Borough Council.
- 2.2 'Code of Conduct' means the Code of Conduct, which the District/Borough [and Parish Council] [has] [have] adopted under section 27(2) of the Localism Act 2011.
- 2.3 'Complainant' means a person who has submitted a complaint in accordance with these Arrangements alleging that a Subject Member has breached the Code of Conduct.
- 2.4 'Disclosable Pecuniary Interest' means those disclosable pecuniary interests that meet the definition prescribed by regulations (as amended from time to time) as set out in Annex 2 to the Code of Conduct.
- 2.5 'Hearing Panel' means the panel appointed by the District/Borough Council to determine the outcome of any complaint alleging a breach of the Code of Conduct by a Subject Member in accordance with these Arrangements.
- 2.6 'Independent Person' means a person or persons appointed by the District/Borough Council under section 28(7) of the Localism Act 2011:
- (a) whose views are to be sought and taken into account by the District/Borough Council before it makes its decision on an allegation that it has decided to investigate and whose views may be sought by the District/Borough Council at any other stage;
 - (b) who may be consulted by the Subject Member about the complaint.
- 2.7 'Investigating Officer' means the person appointed by the Monitoring Officer to undertake a formal investigation of a complaint alleging a breach of the Code of Conduct by a Subject Member. The Investigating Officer may be another senior officer of the District/Borough Council, an officer of another authority or an external investigator.
- 2.8 'Monitoring Officer' is a senior officer of the District/Borough Council who has statutory responsibility for maintaining the Register of Members' Interests and who is responsible for administering the arrangements for dealing with any complaint alleging a breach of the Code of Conduct by a Subject Member. It includes any other officer of the District/Borough Council nominated by the Monitoring Officer to act on their behalf.

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- 2.9 'Parish Council' means the relevant parish/town council within the District/Borough of XXXXX.
- 2.10 'Parties' means the Complainant, Subject Member and the Investigating Officer, as appropriate.
- 2.11 'Subject Member' means an elected member or co-opted member of the District/Borough or Parish Council against whom a complaint has been made alleging a breach the Code of Conduct.
- ~~2.12 'Standards (Assessment) Sub Committee' means the Sub Committee established by the Standards Committee of the District Council with responsibility for making recommendations to the Monitoring Officer on whether in relation to a complaint alleging a failure by a Subject Member to comply with the requirements of the Members Code of Conduct no further action should be taken in respect of the complaint or whether the informal disputes resolution procedure should be instigated or whether the complaint should be the subject of an investigation.~~
- ~~2.13 'Standards (Hearings) Sub Committee' means the Sub Committee established by the Standards Committee of the District Council to conduct a hearing in respect of a complaint against a Subject Member referred to it by the Monitoring Officer under these Arrangements and at the conclusion of the hearing and having regard to the opinion of the Independent Person to recommend to the Monitoring Officer whether in the opinion of the Sub Committee there has been a failure by a Subject Member to comply with the Members Code of Conduct and if so, to further recommend what action should be taken in relation to such failure.~~

3. Appointment of Independent Person

- 3.1 The District/Borough Council shall appoint the Independent Person (and any substitute) in accordance with the requirements of section 27 of the Localism Act 2011 upon such terms as to remuneration and expenses as may be determined by the District/Borough Council from time to time.
- 3.2 The Independent Person (and any substitute) shall be treated as if they were a member of the District/Borough Council for the purposes of the District/Borough Council's arrangements for indemnifying and insuring its Members.

4. Making a complaint

- 4.1 A complaint alleging a breach of the Code of Conduct by a Subject Member must be made either:-
- (a) in writing and addressed to the Monitoring Officer using the Complaint Form included within Annex 1 to these Arrangements or,
- (b) via the Council's website using the on-line complaint form provided there.

Complainants who find difficulty in making their complaint in writing (e.g., because of a disability), should inform the Monitoring Officer of any such difficulty and the Monitoring Officer will arrange for assistance to be offered.

- 4.2 The Subject Member will normally be informed of the identity of the Complainant and details of the complaint made against them, but the Complainant's identity and/or

details of their complaint may be withheld at the Complainant's request if it appears to the Monitoring Officer that there are sound reasons for granting such a request (refer to paragraph 5 of Annex 1 to these Arrangements).

- 4.3 The Monitoring Officer will normally acknowledge receipt of a complaint within 15 working days of receiving it. At the same time (and subject to paragraph. 4.2 above), the Monitoring Officer will send a copy of the complaint to the Subject Member in accordance with paragraph 1 of Annex 1 to these Arrangements.

5. Criminal conduct

- 5.1 In accordance with section 34 of the Localism Act 2011, it is a criminal offence if, without reasonable excuse, you:

- (a) fail to notify the Monitoring Officer of a Disclosable Pecuniary Interest before the end of 28 days beginning with the day you become, or are re-elected or re-appointed, a Member or Co-opted Member of the authority;
- (b) fail to notify the Monitoring Officer of a Disclosable Pecuniary Interest before the end of 28 days beginning with the day you become aware of it, where you are acting alone in the course of discharging a function of the authority (including making a decision in relation to the matter) and the interest is not already registered or is not the subject of a pending notification to the Monitoring Officer;
- (c) fail to disclose a Disclosable Pecuniary Interest at a meeting, where such interest has not already been registered or notified to the Monitoring Officer;
- (d) fail to notify the Monitoring Officer of a Disclosable Pecuniary Interest before the end of 28 days beginning with the day you disclose it at a meeting, where such interest has not already been registered or notified to the Monitoring Officer;
- (e) take part in discussions or votes at meetings that relate to the Disclosable Pecuniary Interest, unless a dispensation has been granted;
- (f) knowingly or recklessly provide false or misleading information in any of the above disclosures or notifications.

- 5.2 Where a complaint against a Subject Member relates to conduct of a criminal nature referred to above, the Monitoring Officer will deal with the complaint in accordance with paragraph 4(4) of Annex 1 to these Arrangements.

6. Anonymous complaints

- 6.1 Complainants must provide their full name and address. An anonymous complaint will only be accepted by the Monitoring Officer, providing it is accompanied by corroborating evidence that indicates to the Monitoring Officer that it is in the public interest to accept the complaint. The Monitoring Officer may consult the Independent Person.

7. Role of Independent Person

- 7.1 The Independent Person must be consulted and have their views taken into account before the District/Borough Council makes a finding as to whether a Member has

failed to comply with the Code or decides on action to be taken in respect of that Member. At any other stage of the complaints process under these Arrangements, the Independent Person may be consulted by the Monitoring Officer and/or the Subject Member.

8. Preliminary tests

- 8.1 The Monitoring Officer will put the complaint through a number of preliminary tests, in accordance with paragraph 2 of Annex 1 to these Arrangements and may do so in consultation with the Independent Person.
- 8.2 In the event that the Independent Person is being consulted and is unavailable or unable to act, the time limits specified in paragraph 2 of Annex 1 may either be extended by the Monitoring Officer or the Monitoring Officer may act alone in taking the decision or action.

9. Informal resolution

- 9.1 The Monitoring Officer may consider that the complaint can be resolved informally at any stage in accordance with paragraph 6 of Annex1 to these Arrangements and may do so in consultation with the Independent Person.

~~9. Standards (Assessment) Sub Committee – Local Assessment Criteria~~

- ~~9.1 In all cases referred to it by the Monitoring Officer the Standards (Assessment) Sub Committee will consider the complaint by applying the Local Assessment Criteria tests in accordance with Paragraph 1.4 of Annex 2 to these Arrangements. The Sub-Committee will then make a recommendation to the Monitoring Officer for action as follows:-

 - ~~(a) That No Further Action be taken in respect of the complaint; or~~
 - ~~(b) That the Informal Disputes Resolution Procedure be instigated in respect of the complaint; or~~
 - ~~(c) That an Investigating Officer be appointed to investigate the complaint~~~~
- ~~9.2 Within five working days of the date of meeting the Standards Assessment Sub Committee will records it recommendations in writing along with summary reasons for such recommendations and submit them to the Monitoring Officer~~
- ~~9.3 Within three working days of the date of receipt of the recommendations of the Standards (Assessment) Sub Committee the Monitoring Officer will, having regard to the local assessment criteria tests and the recommendations of the Standards (Assessment) Sub Committee, determine whether:

 - ~~(a) No Further Action be taken in respect of the complaint; or~~
 - ~~(b) The Informal Disputes Resolution Procedure be instigated; or~~
 - ~~(c) An Investigating Officer be appointed to investigate the complaint.~~~~
- ~~9.4 The Monitoring Officer will prepare a written Decision Notice within two working days or the date of their determination on the complaint giving the reasons for their decision and a copy will be sent to:

 - ~~(a) The Complainant;~~
 - ~~(b) The Subject Member;~~
 - ~~(c) If the Subject Member is a District Councillor and a member of a recognised Political Group, the Group Leader of that Political Group; and~~
 - ~~(d) If the Subject Member is a Town or Parish Councillor, the Clerk of the Town or Parish Council in question.~~~~

10. Investigation

- 10.1 If the Monitoring Officer decides that the complaint merits formal investigation, they will, normally within 30 working days of receiving it, appoint an Investigating Officer to undertake the investigation, and inform the Parties of the appointment.
- 10.2 The Investigating Officer will investigate the complaint in accordance with Annex 2 to these Arrangements.

11. Hearing

- 11.1 If the Monitoring Officer, considers that informal resolution is not appropriate or is unlikely to be achieved, then they will convene a meeting of the Hearing Panel to determine the outcome of the complaint in accordance with Annex 3 to these Arrangements.

12. Sanctions

- 12.1 Where a Subject Member has been found by the Hearing Panel to have breached the Code of Conduct, the Hearing Panel may apply any one or more sanctions in accordance with paragraph 12 of Annex 3 to these Arrangements.

~~12 Investigating Officer's Opinion - 'No Breach'~~

- ~~12.1 If the Investigating Officer is of the opinion that the Subject Member has not failed to comply with the requirements of the Members Code of Conduct the Monitoring Officer will consult with the Independent Person and unless the Independent Person considers that the complaint should be referred to the Standards (Hearings) Sub Committee to conduct a hearing the Monitoring Officer will resolve to take No Further Action in respect of the complaint and notify all those persons notified in accordance with Paragraph 9.4 of these Arrangements.~~
- ~~12.2 The Monitoring Officer will report their decision to take No Further Action to the next ordinary meeting of the Standards Committee as an information item.~~

~~13. Investigating Officer's Opinion - 'Breach'~~

- ~~13.1 If the Investigating Officer is of the opinion that the Subject Member has failed to comply with the requirements of the Members Code of Conduct the Monitoring Officer will convene a meeting of the Standards (Hearings) Sub Committee to conduct a hearing into the complaint. The hearing will be conducted in accordance with Annex 4 to these Arrangements~~
- ~~13.2 The Monitoring Officer will report their decision to refer a complaint to the Standards (Hearings) Sub Committee to the next ordinary meeting of the Standards Committee as an information item.~~

~~14. Decision on a Complaint~~

- ~~14.1 At the conclusion of a hearing and, taking into account the opinion of the Independent Person, the Standards (Hearings) Sub Committee will form an opinion on whether the Subject Member has failed to comply with the requirements of the~~

~~Members Code of Conduct and notify the Monitoring Officer accordingly. In the event that the Standards (Hearings) Sub Committee is of the opinion that there has been a failure by the Subject Member to comply with the requirements of the Members Code of Conduct it shall recommend to the Monitoring Officer what action to take (if any) in respect of such failure.~~

~~14.2 The Monitoring Officer will then make a determination on whether the Subject Member has failed to comply with the requirements of the Members Code of Conduct having regard to the opinion and recommendations of the Standards (Hearings) Sub Committee and the opinion of the Independent Person.~~

13. Appeal

13.1 There is no right of appeal for the Complainant or the Subject Member against decisions of either the Monitoring Officer or the Hearing Panel.

14. Discontinuance of Action

14.1 In the event that the Subject Member has died, is seriously ill or has ceased to be an elected member or co-opted member of the District/Borough or Parish Council the Monitoring Officer may determine to end the complaints process.

15. Revision of these Arrangements

15.1 The District/Borough Council may by resolution agree to amend these Arrangements and has delegated to the Monitoring Officer [and the Hearing Panel] the right to depart from these Arrangements, where considered expedient to do so in order to secure the effective and fair consideration of any matter.

Annexes

Annex 1 - Procedure on Receipt of A Complaint

Annex 2 - Procedure For Investigating The Complaint

Annex 3 - Hearing Panel Procedure

PROCEDURE ON RECEIPT OF A COMPLAINT

1. Notification of Complaint to Subject Member

- 1.1 Subject to any representations from the Complainant on confidentiality (see paragraph 5 below), the Monitoring Officer will notify the Subject Member [and, if applicable, the Parish Clerk] of the complaint.
- 1.2 The Monitoring Officer may invite the Subject Member [and, if applicable, the Parish Clerk] to submit initial views on the complaint, which will be taken into account by the Monitoring Officer when they decide how to deal with the complaint (see paragraph 4 below).

2. Preliminary Tests

- 2.1 The complaint will be assessed by the Monitoring Officer against the legal jurisdiction test in paragraph 2.2 and, if applicable, the local assessment criteria test in paragraph 2.4 below. The Monitoring Officer may assess the complaint in consultation with the Independent Person.

2.2 Legal jurisdiction criteria test:

- (a) Did the alleged conduct occur before the adoption of the Code of Conduct? If the answer to this is 'Yes' the test is failed.
- (b) Was the person complained of, a member of the District or Parish Council at the time of the alleged conduct? If the answer to this is 'No' the test is failed.
- (c) Was the person complained of acting in an official capacity at the time of the alleged conduct? If the answer to this is 'No' the test is failed.
- (d) Did the alleged conduct occur when the person complained of was acting as a member of another authority? If the answer to this is 'Yes' the test is failed.
- (e) If the facts could be established as a matter of evidence, could the alleged conduct be capable of supporting a finding of a breach of the Code of Conduct? If the answer to this is 'No' the test is failed.
- (f) Is the complaint about dissatisfaction with the District or Parish Council's decisions, policies, and priorities, etc? If the answer to this is 'Yes' the test is failed.

2.3 Local assessment criteria test:

If the complaint satisfies the legal jurisdiction test, the Monitoring Officer will then apply the following local assessment criteria test:

- (a) The complaint is substantially the same as a complaint which has previously been made.

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- (b) The complaint is anonymous, unless the Monitoring Officer is of the view, on the basis of corroborating evidence that it is in the public interest to accept the complaint. The Monitoring Officer may consult the Independent Person.
- (c) No or insufficient information/evidence to substantiate the complaint has been submitted by the Complainant.
- (d) The complaint is malicious or relatively minor, and, in the view of the Monitoring Officer, the public interest would not be served by taking further action.
- (e) The Complainant is unreasonably persistent, malicious and/or vexatious.
- (f) The alleged misconduct happened more than 3 months prior to the submission of the complaint.
- (g) Dealing with the complaint would have a disproportionate effect on both public money and/or officers' and Members' time.
- (h) The circumstances have changed so much that there would be little benefit arising from an investigation or other action.
- (i) The complaint has been the subject of an investigation or other action and there is nothing more to be gained by further action being taken.
- (j) The complaint is such that it is unlikely that an investigation will be able to come to a firm conclusion on the matter, e.g., where there is no firm evidence on the matter.
- (k) The complaint is about a deceased person.
- (l) The complaint is about a person who is no longer a District or Parish Councillor or Co-opted Member.

2.4 If the complaint fails one or more of the jurisdiction tests, no further action will be taken by the Monitoring Officer and the complaint will be rejected. The Complainant will be notified accordingly with reasons, normally within 60 working days of receipt of the complaint by the Monitoring Officer. There is no right of appeal against the Monitoring Officer's decision.

3. Asking for Additional Information

3.1 The Monitoring Officer may ask the Complainant and the Subject Member [and, if applicable, the Parish Clerk] for additional information before deciding how to deal with the complaint.

4. What Process to Apply - Informal Resolution or Investigation and/or No Action?

4.1 The Monitoring Officer may at any stage seek to resolve the complaint informally in accordance with paragraph 6 below. Where the Subject Member or the Monitoring Officer or the District or Parish Council make a reasonable offer of informal resolution, but the Complainant is not willing to accept this offer, the Monitoring Officer will take account of this in deciding whether the complaint merits formal investigation.

4.2 The Monitoring Officer may refer the complaint for investigation when:

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- (a) It is serious enough, if proven, to justify the range of sanctions available to the Standards Committee (see paragraph 12 of Annex 3 to these Arrangements); or
 - (b) The Subject Member's behaviour is part of a continuing pattern of less serious misconduct that is unreasonably disrupting the business of the District or Parish Council and there is no other avenue left to deal with it short of investigation. In considering this, the Monitoring Officer may take into account the time that has passed since the alleged conduct occurred.
- 4.3 Where the complaint is referred for investigation, the Monitoring Officer will appoint an Investigating Officer who will conduct the investigation in accordance with the procedure at Annex 2 to these Arrangements.
- 4.4 If the complaint identifies potential criminal conduct or potential breach of other regulations by the Subject Member or any other person, the Complainant may be advised by the Monitoring Officer to report the complaint to the police or other prosecuting or regulatory authority. Alternatively, the Monitoring Officer will consider the complaint against the legal jurisdiction criteria test and if the complaint passes that test the Monitoring Officer may pass the complaint to the police. Where a complainant has been advised to refer a matter to the police or the Monitoring Officer has referred the matter to the police the complaints process under these Arrangements will be suspended, pending a decision/action by the police or other prosecuting or regulatory authority. Where the police or other prosecuting or regulatory authority decide to take no action on the complaint, the Monitoring Officer will lift the suspension and will apply the local assessment criteria test in paragraph 2.4 above.
- 4.5 The Monitoring Officer may decide to take no action or to defer further action on the complaint whilst one or more of the following apply:
- (a) On-going criminal proceedings or police investigation into the Subject Member's conduct.
 - (b) Investigation cannot be proceeded with, without investigating similar alleged conduct or needing to come to conclusions of fact about events which are also the subject of some other investigation or court proceedings.
 - (c) The investigation might prejudice another investigation or court proceedings.
 - (d) Genuine long term (3 months or more) unavailability of a key party.
 - (e) Serious illness of a key party.
- 4.6 Normally within 90 working days of receipt of the complaint, the Monitoring Officer will notify the Complainant, Subject Member [and, if applicable, the Parish Clerk] of their decision and reasons for applying one of the following processes in the format of the Decision Notice template (appended to this Annex 1):
- (a) Not to refer the complaint for investigation.
 - (b) Refer the complaint for investigation.
 - (c) Apply the informal resolution process either before or after an investigation.
 - (d) Refer the complaint to the relevant political group leader for action.

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4.7 There is no right of appeal against the Monitoring Officer's decision.

5. Confidentiality

5.1 If the Complainant has asked for their identity to be withheld, this request will be considered by the Monitoring Officer when they initially assess the complaint (see paragraph 2 above). The Monitoring Officer may consult the Independent Person.

5.2 As a matter of fairness and natural justice, the Subject Member will usually be told who the Complainant is and will also receive details of the complaint. However, in exceptional circumstances, it may be appropriate to keep the Complainant's identity confidential or not disclose details of the complaint to the Subject Member during the early stages of an investigation. The Monitoring Officer may withhold the Complainant's identity and/or details of the complaint if they are satisfied that there are reasonable grounds for believing that the Complainant or any other person (e.g., a witness):

- (a) Is either vulnerable or at risk of threat, harm, or reprisal.
- (b) May suffer intimidation or be victimised or harassed.
- (c) Works closely with the Subject Member and are afraid of the consequences, e.g., fear of losing their job.
- (d) Suffers from a serious health condition and there are medical risks associated with their identity being disclosed (medical evidence will need to be provided to substantiate this).
- (e) May receive less favourable treatment because of the seniority of the person they are complaining about in terms of any existing District or Parish Council service provision or any tender/contract they may have with or are about to submit to the District or Parish Council.

OR where early disclosure of the complaint:

- (a) May lead to evidence being compromised or destroyed; or
- (b) May impede or prejudice the investigation; or
- (c) Would not be in the public interest.

5.3 Relevant public interest factors favouring disclosure (not an exhaustive list) include:

- (a) To facilitate transparency and ethical governance accountability: recognising that decision-making may be improved by constructive contributions from others.
- (b) To raise public awareness: disclosing the complaint or part of it may inform the community about matters of general concern.
- (c) Justice to an individual: the balance of the public interest may favour disclosure of the complaint to the Subject Member when it may not be in the public interest to disclose it to the world at large.

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- (d) Bringing out in the open serious concerns about the behaviour/conduct of an individual.

5.4 If the Monitoring Officer decides to refuse the Complainant's request for confidentiality, they will offer the Complainant the option to withdraw their complaint. The Complainant will be notified of the Monitoring Officer's decision, with reasons by the Monitoring Officer. There is no right of appeal against the Monitoring Officer's decision to refuse the Complainant's request for confidentiality.

6. Informal Resolution

6.1 The Monitoring Officer may seek to resolve a complaint informally at any stage in the process, whether without the need for an investigation, or before or after an investigation has been commenced or concluded. In so doing, the Monitoring Officer will consult with the Complainant and the Subject Member to seek to agree what they consider to be a fair resolution, which will help to ensure higher standards of conduct for the future.

6.2 Informal resolution may be the simplest and most cost effective way of resolving the complaint and may be appropriate where:

- (a) The Subject Member appears to have a poor understanding of the Code of Conduct and/or related District or Parish Council procedures; or
- (b) There appears to be a breakdown in the relationship between the Complainant and the Subject Member; or
- (c) The conduct complained of appears to be a symptom of wider underlying conflicts which, if unresolved, are likely to lead to further misconduct or allegations of misconduct; or
- (d) The conduct complained of appears common to a number of members of the District or Parish Council, demonstrating a lack of awareness, experience or recognition of the particular provisions of the Code of Conduct and/or other District or Parish Council procedures, etc; or
- (e) The conduct complained of appears to the Monitoring Officer not to require a formal sanction; or
- (f) The complaint appears to reveal a lack of guidance, protocols and procedures within the District or Parish Council; or
- (g) The Complainant and the Subject Member are amenable to engaging in an informal resolution; or
- (h) The complaint consists of allegations and retaliatory allegations between councillors; or
- (i) The complaint consists of allegations about how formal meetings are conducted; or
- (j) The conduct complained of may be due to misleading, unclear, or misunderstood advice from officers.

6.3 Informal resolution may consist of one or more of the following actions, which do not have to be limited to the Subject Member, but may extend to other councillors

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including the whole District or Parish Council where it may be useful to address systemic behaviour:

- (a) Training.
 - (b) Conciliation/mediation.
 - (c) Mentoring.
 - (d) Apology.
 - (e) Instituting changes to the District or Parish Council's procedures.
 - (f) Conflict management.
 - (g) Development of the District or Parish Council's protocols.
 - (h) Other remedial action by the District or Parish Council.
 - (i) Other steps (other than investigation) if it appears appropriate to the Monitoring Officer.
- 6.4 If the Subject Member is agreeable to and complies with the informal resolution process, the Monitoring Officer may report the matter to the Standards Committee [and, if applicable, the Parish Council] for information, but will take no further action against the Subject Member.
- 6.5 Where the Subject Member will not participate in the informal resolution process or if, having agreed to one or more actions under the informal resolution process, the Subject Member refuses or fails to carry out any agreed action, the Monitoring Officer may report the matter to the Standards Committee.

Complaint Form

Your Details

1. Please provide us with your name and contact details.

Title:	
First name:	
Last name:	
Address:	
Daytime telephone:	
Evening telephone:	
Mobile telephone:	
Email address:	

2. Please tell us which complainant type best describes you:

- Member of the public
- An elected or co-opted member of an authority
- An appointed Independent Person for the purposes of the Localism Act 2011
- Member of Parliament
- Local authority Monitoring Officer
- Other council officer or authority employee
- Other (please give details) _____

3. Please provide us with the name of the councillor(s) you believe has breached the Code of Conduct and the name of their authority:

Title	First name	Last name	Council or authority name

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4. **Please explain in this section what the councillor has done that you believe breaches the Code of Conduct.** If you are complaining about more than one councillor, you should clearly explain what each individual person has done that you believe breaches the Code of Conduct.

It is important that you provide all the information you wish to have taken into account by the Monitoring Officer when he decides whether to take any action on your complaint. For example:

- You should be specific, wherever possible, about exactly what you are alleging the councillor said or did. For instance, instead of writing that the councillor has conducted himself in a manner which could reasonably be regarded as bringing his office or the Authority into disrepute you, you should state what it was they said or did.
- You should provide the dates of the alleged incidents wherever possible. If you cannot provide exact dates, it is important to give a general timeframe.
- You should confirm whether there are any witnesses to the alleged conduct and provide their names and contact details if possible.
- You should provide any relevant background information.

Please provide us with the details of your complaint. Continue on a separate sheet if there is not enough space on this form.

5. Only complete this next section if you are requesting that your identity is kept confidential. Please see the notes in the accompanying leaflet "How to make a complaint".

There is a presumption that a copy of this form will be provided to the subject member of your complaint. If you wish to request that information relating to your identity is kept confidential and withheld from the subject please complete the box below.

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

[Redacted]

Signed: _____

Date: [Redacted] _____

Return Address: The Monitoring Officer

[Redacted]

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Complaints Form – Monitoring Information

In order to ensure we target our services in the most effective way for our community, we would appreciate if it you would give answers to the following questions. Please note that the information on this page **will not** be provided to the subject member of the complaint.

Q1. Ethnic Group

- White:**
British
- Irish
- Any other white background
- Black or Black British:**
Caribbean
- African
- Any other black background
- Asian or Asian British:**
Indian
- Pakistani
- Bangladeshi
- Any other Asian background

Q2. Sex

- Male
- Female

Q3. Partnership Status

- Single
- Married/Civil Partner
- Separated
- Divorced
- Widow/Widower

Q4. Age Group

- Under 16
- 16-19
- 20-24
- 25-59
- 60-64
- 65 and above

Q5. Do you have a disability?

- Yes
- No

Q6. What is the nature of your disability?

- Difficulty getting around
- Mental health problems
- Learning difficulty
- Difficulty seeing
- Hearing difficulty
- Other

Q7. To help us monitor issues for different sections of our community, we would appreciate it if you would tell us which faith group, if any, you belong to. If lack of faith is an issue in itself we would also like to know.

**EXAMPLE TEMPLATE - DECISION NOTICE (of the Monitoring Officer): e.g.,
REFERRAL FOR INVESTIGATION**

Parties should take care when passing on information that is in the notice or about the notice. For example, some details such as names and addresses may be confidential or private in nature or may be personal information.

Complaint No:

Complaint

On [insert date], the Monitoring Officer considered a complaint from [insert name of complainant] concerning the alleged conduct of [insert name of councillor], a member of [insert authority name]. A general summary of the complaint is set out below.

Complaint summary

[Summarise complaint in numbered paragraphs]

Consultation with Independent Person

[Summarise the Independent Person's views in numbered paragraphs]

Decision

[Having consulted and taken into account the views of the Independent Person], the Monitoring Officer decided to refer the complaint for investigation.

Potential breaches of the Code of Conduct identified

At this stage, the Monitoring Officer is not required or able to decide if the Code of Conduct has been breached. They are only considering if there is enough information which shows a potential breach of the Code of Conduct that warrants referral for investigation.

The Monitoring Officer considers that the alleged conduct, if proven, may amount to a breach of the following paragraphs of the Code of Conduct. The Monitoring Officer has appointed [insert name] as the Investigating Officer.

Please note that it will be for the Investigating Officer to determine which paragraphs are relevant, during the course of the investigation.

[detail relevant Code of Conduct paragraphs]

Notification of decision

This decision notice is sent to the:

- Complainant.
- Member against whom the complaint was made.
- [Clerk to the relevant Parish or Town Council].
- Kent County Council's Monitoring Officer (*applicable only where the Subject Member is serving at both District and County level*).

What happens now

The complaint will now be investigated under the District Council's Arrangements for Dealing with Code of Conduct Complaints under the Localism Act 2011.

Appeal

There is no right of appeal against the Monitoring Officer's decision.

Additional Help

If you need additional support in relation to this decision notice or future contact with the District Council, 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 Equality Act 2010. We can also help if English is not your first language. Please refer to the attached Community Interpreting Service leaflet or contact our Customer Services on [insert telephone number] or email [insert email address].

Signed:

Date

Print name:

Monitoring Officer of xxxxxx District Council

Address xxx

ANNEX 2**PROCEDURE FOR INVESTIGATING THE COMPLAINT****1. Preliminaries**

- 1.1 The Investigating Officer will be appointed by the Monitoring Officer and will be aware of their obligations under UK GDPR and the Data Protection Act 2018, Equalities Act 2010, the Human Rights Act 1998, and other relevant legislation.
- 1.2 The Investigating Officer is responsible for gathering all the facts, documents and, where applicable, for interviewing witnesses with knowledge of the facts, and they should remain objective, impartial, and unbiased at all times.
- 1.3 The Subject Member and the Complainant will be advised that the investigation is for the purposes of establishing facts and making recommendations as to whether the facts disclose a breach of the relevant code of conduct.
- 1.4 Witnesses will be identified at the investigation stage and wherever possible their evidence supported by signed and dated witness statements and/or notes of interviews with the Investigating Officer. The Investigating Officer cannot compel the attendance of witnesses or their co-operation.
- 1.5 The Investigating Officer will not make recommendations on sanctions.
- 1.6 The Investigating Officer will notify the Subject Member and the Complainant of their appointment, normally within 20 working days of being appointed, and:
 - (a) Provide details of the complaint to the Subject Member.
 - (b) Detail the procedure to be followed in respect of the investigation and the relevant timescales for responses and concluding the investigation.
 - (c) Detail the sections of the Code of Conduct that appear to be relevant to the complaint.
 - (d) Request contact details of any potential witnesses.
 - (e) Require that confidentiality is maintained throughout the duration of the investigation and the procedures contemplated by this Annex and that details of the complaint are not disclosed to any third party, unless disclosure is to a representative, witness, immediate family members or otherwise as may be required by law or regulation. However, the fact that an investigation is being conducted does not need to remain confidential.
- 1.7 It may be necessary for the Investigating Officer to agree with the Subject Member which documents will be submitted in evidence. This will generally include documents that will be relied on, or in support of, the Subject Member's case and which are relevant to the complaint.
- 1.8 The Investigating Officer may conclude their investigation at any point, where they are satisfied that they have sufficient information to enable them to report to the Monitoring Officer.

2. Evidence of New Breaches

2.1 The Investigating Officer may find evidence of conduct by councillors that breaches the Code of Conduct but extends beyond the scope of the investigation referred to them. Their powers as an Investigating Officer relate only to the allegation that they been given. While that means that the Investigating Officer may consider other parts of the Code than those initially considered if they are relevant to the matter in hand, they may also find evidence of a possible breach that does not directly relate to the allegation being investigated. If this happens, the Investigating Officer should tell the person they obtained the information from that they cannot investigate the possible breach as part of their existing investigation. The Investigating Officer should advise them that they are able to make a separate complaint to the Monitoring Officer.

3. Referring Cases Back to the Monitoring Officer

3.1 During the course of an investigation, it may be necessary for the Monitoring Officer to consider whether the investigation should continue, for example, if:

- (a) Evidence suggests a case is less serious than may have seemed apparent originally and that a different decision might therefore have been made about whether to investigate it or not.
- (b) It emerges during the investigation that the conduct under investigation was not conduct by the Subject Member in their role as a councillor but rather in a private capacity.
- (c) Evidence indicates something which is potentially more serious which should be referred to the police.
- (d) The Subject Member has died, is seriously ill, has resigned from the authority, or is otherwise reasonably unable to take part in the process for the foreseeable future and it is considered that it is no longer appropriate to continue with the investigation.
- (e) The Subject Member has indicated that they wish to make a formal apology or take other action which should resolve the matter.

3.2 In this context 'seriously ill' means that the councillor has a medical condition which would prevent them from engaging with the process of an investigation or a hearing for the foreseeable future. This might be a terminal illness or a degenerative condition. The Investigating Officer would be expected to establish this from a reliable independent and authoritative source other than the Subject Member. This would include where a councillor claims they are suffering from stress brought on by the investigation.

3.3 Ultimately it will be for the Monitoring Officer to conclude whether the investigation should continue. In reaching that decision, the Monitoring Officer may consult with the Independent Person before deciding to defer or end the investigation.

3.4 If the investigation has been deferred or ended the Subject Member and the complainant should be notified of the decision and where possible provided with timescales within which the matter will be dealt with if it has been deferred. This

would not always be possible, however, particularly if the matter has been referred to the police.

4. Deferring an Investigation

4.1 An investigation should be deferred when any of the following conditions are met:

(a) There are ongoing criminal proceedings or a police investigation into the Subject Member's conduct.

(b) The investigation might prejudice another investigation or court proceeding.

4.2 An investigation may also need to be deferred for any of the reasons set out in paragraph 4.5 of Annex 1:

4.3 When it is clear that there is an ongoing police or other investigation, or related court proceedings, the Investigating Officer should make enquiries about the nature of the police, or other investigation, or the nature of any court proceedings.

4.4 If at any time during the investigation the Investigating Officer becomes aware of any circumstances that might require the investigation to be deferred, the Investigating Officer should notify the Monitoring Officer who should determine whether there should be a deferral. The Monitoring Officer may also wish to consult with the Independent Person.

4.5 In some cases, it will be possible to investigate some of the alleged conduct, where there is no overlap with another investigation or court proceedings. The Investigating Officer should highlight those areas where investigation may be possible in the investigation plan.

4.6 The Monitoring Officer or the Investigating Officer should ask the police, other relevant organisation or individual, in writing to keep them informed of the outcome of any police or other investigation, court proceedings or other relevant matter. Any important dates, for example of committal hearings should be noted in the investigation plan review.

4.7 A deferred investigation should be kept under regular review, in the interests of natural justice.

4.8 Once a decision is taken to begin the investigation again the Investigating Officer should notify in writing: the Subject Member; the complainant; the relevant Independent Person; and the relevant town or parish council if the Subject Member is a town or parish councillor.

4.9 The investigation plan should be reviewed in the light of the outcome of any police investigation or court proceedings.

5. The Draft Report

5.1 On the conclusion of their investigation the Investigating Officer will issue a draft report (clearly labelled 'DRAFT and CONFIDENTIAL') to the Monitoring Officer for review.

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- 5.2 Following review by the Monitoring Officer, the draft report will be sent in confidence to the Subject Member and the Complainant (not witnesses) for comment. The draft report will be clearly labelled 'DRAFT and CONFIDENTIAL' and will detail:
- (a) The relevant provisions of the law and the relevant paragraphs of the Code of Conduct.
 - (b) A summary of the complaint.
 - (c) The Subject Member's response to the complaint.
 - (d) Relevant information, explanations, etc, which the Investigation Officer has obtained in the course of the investigation.
 - (e) A list of any documents relevant to the matter.
 - (f) A list of those persons/organisations who have been interviewed.
 - (g) A statement of the Investigating Officer's draft findings of fact and reasons.
 - (h) The Investigating Officer's conclusion as to whether the Subject Member has or has not failed to comply with the Authority's Code of Conduct.
 - (i) That the Investigating Officer will present a final report once they have considered any comments received on the draft.
- 5.3 Once the Investigating Officer has received any responses from the Subject Member and/or the Complainant, they will finalise the draft report and make their final conclusions and recommendations to the Monitoring Officer. The report will be clearly labelled 'FINAL and CONFIDENTIAL'.

6. Consideration of Investigating Officer's Final Report

- 6.1 The Monitoring Officer will review the Investigating Officer's final report and any comments submitted by the Parties, in consultation with the Independent Person.
- 6.2 Where, on the basis of the Investigating Officer's report, the Monitoring Officer, having consulted with the Independent Person, concludes that there is no evidence of a failure to comply with the Code of Conduct; they will inform the Parties in writing that no further action is considered necessary. There is no right of appeal against the Monitoring Officer's decision.
- 6.3 Where, on the basis of the Investigating Officer's report, the Monitoring Officer, having consulted with the Independent Person, concludes that there is evidence of a failure to comply with the Code of Conduct, they will either:
- (a) Take no action; or
 - (b) Seek informal resolution; or
 - (c) Refer the matter for consideration by the Hearing Panel in accordance with the relevant procedure detailed in Annex 3 to these Arrangements.

7. Confidentiality

- 7.1 The procedures detailed in this Annex are all treated as confidential to those involved in the process. Some details (which would include names and addresses) may be personal data, subject to data protection laws, some content of statements or reports may be otherwise private or confidential or, may be potentially defamatory if published.
- 7.2 Whilst non-members are not covered by the Code of Conduct (e.g., members of the public, witnesses and non-councillor complainants) if, they do decide to publish details of the complaint they may expose themselves to liability in defamation (if information turns out to be untrue) or to other liabilities e.g., for breach of confidence, or for breach of data protection laws which could arise even where the information is true. Non-members may wish to seek their own legal advice.

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Hearing Panel Procedure

1. Pre-Hearing Procedure

1.1 In order to allow the hearing to proceed fairly and efficiently, the Monitoring Officer may in appropriate cases use a pre-hearing procedure to identify:

- (a) Which facts in the investigation report are agreed and which are in dispute.
- (b) Whether there is fresh evidence not mentioned in the investigation report which will be put before the hearing.
- (c) Whether there is documentary evidence which a party intends to put before the hearing.
- (d) Whether the parties intend to attend, whether the parties intend to be represented in accordance with paragraph 3 and, if so, by whom, the number and identity of witnesses to be called.
- (e) Whether the Subject Member requests the whole or any part of the hearing to be held in private.
- (f) Whether the Subject Member requests the whole or any part of the investigation report or other relevant documents to be withheld from the public.

1.2 The Monitoring Officer will notify the parties of the date, time, and place for the hearing.

2. Rules of Procedure

2.1 The Hearing Panel consists of three voting elected Members drawn from the [Standards Committee], one of whom shall be elected as Chairman.

2.2 The quorum for a meeting of the Hearing Panel is three elected Members.

2.3 The Independent Person's views must be sought and taken into consideration before the Hearing Panel takes any decision on whether the Subject Member's conduct constitutes a failure to comply with the Code of Conduct and as to any sanction to be taken following a finding of failure to comply with the Code of Conduct. The Independent Person should normally be present throughout the hearing (but not during the deliberations of the Hearing Panel in private) but in the event that this is not possible, may instead submit their views on the complaint to the Hearing Panel in writing.

2.4 The legal requirements for publishing agendas, minutes, and calling meetings, will apply to the Hearing Panel. The presumption is that the hearing will be held in public no earlier than 14 working days after the Monitoring Officer has copied the Investigating Officer's final report to the complainant and the Subject Member. Schedule 12A Local Government Act 1972 (as amended) may be applied to exclude the public and press from meetings of the Hearing Panel.

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- 2.5 Once a hearing has started, the District Council's Rules of Substitution do not apply to the Hearing Panel's proceedings.
- 2.6 All matters/issues before the Hearing Panel will be decided by a simple majority of votes cast, with the Chairman having a second or casting vote.
- 2.7 Where the Subject Member fails to attend the Hearing Panel and where the Hearing Panel is not satisfied with their explanation for their absence from the hearing, the Hearing Panel may in the first instance have regard to any written representations submitted by the Subject Member and may resolve to proceed with the hearing in the Subject Member's absence and make a determination or, if satisfied with the Subject Member's reasons for not attending the hearing, adjourn the hearing to another date. The Hearing Panel may resolve in exceptional circumstances, that it will proceed with the hearing on the basis that it is in the public interest to hear the allegations expeditiously.¹
- 3. Right to be Accompanied by a Representative**
- 3.1 The Subject Member may choose to be represented by counsel, a solicitor, or by any other person they wish. The panel does, however, have the right to require a representative to leave if that representative disrupts the hearing. However, an appropriate warning will be given before requiring a representative to leave the hearing.
- 4. Order of Business**
- 4.1 Subject to paragraph 4.2 below, the order of business will be as follows:-
- (a) Elect a Chairman.
 - (b) Apologies for absence.
 - (c) Declarations of interests.
 - (d) In the absence of the Subject Member, consideration as to whether to adjourn or to proceed with the hearing (refer to paragraph 2.7 above).
 - (e) Introduction by the Chairman, of members of the Hearing Panel, the Independent Person, Monitoring Officer, Investigating Officer, legal advisor, complainant and the Subject Member and their representative.
 - (f) To receive representations from the Monitoring Officer and/or Subject Member as to whether any part of the hearing should be held in private and/or whether any documents (or parts thereof) should be withheld from the public/press.
 - (g) To determine whether the public/press are to be excluded from any part of the meeting and/or whether any documents (or parts thereof) should be withheld from the public/press.
- 4.2 The Chairman may exercise their discretion and amend the order of business, where they consider that it is expedient to do so in order to secure the effective and fair consideration of any matter.
- 4.3 The Hearing Panel may adjourn the hearing at any time.

¹ Janik v Standards Board for England & Adjudication Panel for England (2007)

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5. Presentation of the Complaint

5.1 The Monitoring Officer, legal advisor, or chairman may make an introductory statement outlining the nature of the complaint and the purpose of the hearing, and the procedure to be followed.

5.2 The Investigating Officer presents their report including any documentary evidence or other material and calls their witnesses. No new points will be permitted.

5.3 The Subject Member or their representative may question the Investigating Officer and any witnesses called by the Investigating Officer.

5.4 The Hearing Panel may question the Investigating Officer upon the content of their report and any witnesses called by the Investigating Officer.

6. Presentation of the Subject Member's Case

6.1 The Subject Member or their representative presents their case and calls their witnesses.

6.2 The Investigating Officer may question the Subject Member and any witnesses called by the Subject Member.

6.3 The Hearing Panel may question the Subject Member and any witnesses called by the Subject Member.

7. Summing Up

7.1 The Investigating Officer sums up the complaint.

7.2 The Subject Member or their representative sums up their case.

8. Views/Submissions of the Independent Person

8.1 The Chairman will invite the Independent Person to express their view on whether or not they consider that on the facts presented to the Hearing Panel, there has been a breach of the Code of Conduct.

9. Deliberations of the Hearing Panel to be in Private

9.1 The Hearing Panel will adjourn the hearing and deliberate in private (assisted on matters of law by a legal advisor) to consider whether or not, on the facts found, the Subject Member has failed to comply with the Code of Conduct.

9.2 The Hearing Panel may at any time come out of private session and reconvene the hearing in public, in order to seek additional evidence from the Investigating Officer, the Subject Member, or the witnesses. If further information to assist the Panel cannot be presented, then the Panel may adjourn the hearing and issue directions as to the additional evidence required and by whom.

10. Announcing Decision on Facts Found

10.1 The Hearing Panel will reconvene the hearing in public (if the public have not been excluded from the proceedings) and the Chairman will announce whether or not on

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the facts found, the Panel considers that there has been a breach of the Code of Conduct.

10.2 Where the Hearing Panel considers that there has been a breach of the Code of Conduct, the Chairman will invite the Independent Person, the Subject Member and the Monitoring Officer to make their representations as to whether or not any sanctions should be applied and, if so, what form they should take.

10.3 When deciding whether to apply one or more sanctions, the Hearing Panel will ensure that the application of any sanction is reasonable and proportionate to the Subject Member's behaviour. The Hearing Panel will consider the following questions along with any other relevant circumstances or other factors specific to the local environment:

- (a) What was the Subject Member's intention and did they know that they were failing to follow the District or Parish Council's Code of Conduct?
- (b) Did the Subject Member receive advice from officers before the incident and was that advice acted on in good faith?
- (c) Has there been a breach of trust?
- (d) Has there been financial impropriety, e.g., improper expense claims or procedural irregularities?
- (e) What was the result/impact of failing to follow the District or Parish Council's Code of Conduct?
- (f) How serious was the incident?
- (g) Does the Subject Member accept that they were at fault?
- (h) Did the Subject Member apologise to the relevant person(s)?
- (i) Has the Subject Member previously been reprimanded or warned for similar misconduct?
- (j) Has the Subject Member previously breached the District or Parish Council's Code of Conduct?
- (k) Is there likely to be a repetition of the incident?

10.4 Mitigating factors may include:

- (a) An honestly held, although mistaken, view that the action concerned did not constitute a failure to follow the provisions of the Code of Conduct, particularly where such a view has been formed after taking appropriate advice.
- (b) A councillor's previous record of good service.
- (c) Substantiated evidence that the councillor's actions have been affected by ill-health.
- (d) Recognition that there has been a failure to follow the Code.
- (e) Co-operation in rectifying the effects of that failure.

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- (f) An apology to affected persons where that is appropriate.
- (g) Self-reporting of the breach by the councillor.
- (h) Compliance with the Code since the events giving rise to the complaint.

10.5 Aggravating factors may include:

- (a) Dishonesty or breaches of trust.
- (b) Tying to gain an advantage or disadvantage for themselves or others.
- (c) Bullying.
- (d) Continuing to deny the facts despite clear contrary evidence.
- (e) Seeking unfairly to blame other people.
- (f) Failing to heed appropriate advice or warnings or previous findings of a failure to follow the provisions of the Code.
- (g) Persisting with a pattern of behaviour which involves repeatedly failing to abide by the provisions of the Code.

10.6 Having heard the representations of the Independent Person, the Subject Member and the Monitoring Officer on the application of sanctions, the Hearing Panel will adjourn and deliberate in private.

11. Final Decision

11.1 Where the complaint has a number of elements, the Hearing Panel may reach a finding, apply a sanction and/or make a recommendation on each element separately.

11.2 The Hearing Panel will make its decision on the balance of probabilities, based on the evidence before it during the hearing.

11.3 Having taken into account the Independent Person, the Subject Member and the Monitoring Officer's representations on the application of sanctions, the Hearing Panel will reconvene the hearing in public and the Chairman will announce:

- (a) The Panel's decision as to whether or not the Subject Member has failed to comply with the Code of Conduct, and the principal reasons for the decision.
- (b) The sanctions (if any) to be applied.
- (c) The recommendations (if any) to be made to the District or Parish Council or Monitoring Officer.
- (d) That there is no right of appeal against the Panel's decision and/or recommendations.

12. Range of Possible Sanctions or Other Actions

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12.1 Where the Hearing Panel determines that the Subject Member has failed to comply with the Code of Conduct, any one or more of the following sanctions may be applied/recommended:

- (a) Report its findings in respect of the subject member's conduct to the Council (or the relevant Parish Council).
- (b) Issue (or recommend to the Parish Council to issue) a formal censure (i.e., the issue of an unfavourable opinion or judgement or reprimand).
- (c) Recommend to the leader of the authority that the Subject Member be removed from positions of responsibility.
- (d) Instruct the Monitoring Officer to (or recommend that the Parish Council) arrange training for the Subject Member.
- (e) Recommend to Council (or recommend to the Parish Council) that the Subject Member be removed from all outside appointments to which they have been appointed or nominated by the authority (or by the parish Council).
- (f) Recommend to Council (or recommend to the Parish Council) that it withdraws facilities provided to the Subject Member by the authority for a specified period, such as a computer, website and/or email and internet access.
- (g) Recommend to Council (or recommend to the Parish Council) that it excludes the Subject Member from the authority's offices or other premises for a specified period, with the exception of meeting rooms as necessary for attending Council, committee and sub-committee meetings, and/or restricts contact with officers to named officers only.
- (h) If relevant recommend to Council that the Subject Member be removed from their role as leader of the authority.
- (i) If relevant recommend to the secretary or appropriate official of a political group that the councillor be removed as group leader or other position of responsibility.
- (j) Recommend that the Subject Member make an apology in respect of the conduct or take some other action to resolve the matter.

12.2 Where the Subject Member is a Parish or Town councillor, the matter is referred back to their Council to say that a breach of the Code has been found and with a recommended sanction. The Town or Parish Council must then meet to consider whether to impose that sanction or to replace it with another relevant sanction. They cannot overturn the finding that there has been a breach of the Code and if they wish to impose a different sanction they should seek advice from the clerk and/or the Monitoring Officer. The panel should also ask the Parish or Council to report back to the monitoring officer within three months to confirm that they have met to discuss the sanction, and if necessary, to write again once the sanction has been fulfilled.

12.3 Note that under the Code of Conduct failure to comply with a sanction may of itself be a breach of the Code.

12.4 The Hearing Panel has no power to suspend or disqualify the Subject Member or to withdraw basic or special responsibility allowances.

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12.4 The Hearing Panel may specify that any sanction take effect immediately or take effect at a later date and that the sanction be time limited.

13. Publicising the Findings

13.1 The Monitoring Officer should arrange for a decision notice to be published on the website of any authorities concerned. A template decision notice is appended which may be used for these purposes.

13.2 If the panel finds that the Subject Member did not fail to follow the authority's Code of Conduct, the public summary must say this and give reasons for this finding.

13.3 If the panel finds that the Subject Member failed to follow the Code but that no action is needed, the public summary should:

(a) Say that the councillor failed to follow the Code, but that no action needs to be taken.

(b) Outline what happened.

(c) Give reasons for the panel's decision not to take any action.

13.4 If the panel finds that a councillor failed to follow the Code and it imposed or recommended a sanction or other action, the public summary should:

(a) Say that the councillor failed to follow the Code.

(b) Outline what happened.

(c) Explain what sanction has been imposed.

(d) Give reasons for the decision made by the panel.

13.5 The panel's reports and minutes should be available for public inspection in the same way as other local authority committee papers.

14. Appeals

14.1 Given that the framework and sanctions are meant to be light-touch and proportionate, there is no right of appeal against a decision on a Code of Conduct complaint.

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TEMPLATE – DECISION NOTICE (of Hearing Panel)

Complaint No: xxxx

On [insert date], the Hearing Panel of xxxx District Council considered a report of an investigation into the alleged conduct of [insert name of councillor], a member of [insert authority name]. A general summary of the complaint is set out below.

Complaint summary

[Summarise complaint in numbered paragraphs as set out in the Investigating Officer’s report to the Hearing Panel]

Consultation with Independent Person

[Summarise the Independent Person’s views in numbered paragraphs]

Findings

After considering the submissions of the parties to the hearing and the views of the Independent Person, the Hearing Panel reached the following decision(s):

[Summarise the finding of facts and the Hearing Panel’s decision against each finding of fact in numbered paragraphs as set out in the Investigating Officer’s report to the Hearing Panel, but substitute the Investigating Officer for the Hearing Panel. Please note that the Hearing Panel’s findings may differ from that of the Investigating Officer]

The Hearing Panel also made the following recommendation(s)

[Detail recommendations]

Sanctions applied

The breach of the [insert authority name] Code of Conduct warrants a [detail sanctions applied].

Appeal

There is no right of appeal against the Hearing Panel’s decision.

Notification of decision

This decision notice is sent to the:

- Councillor [name of councillor]
- Complainant
- Monitoring Officer
- [Clerk to the xxxx Parish/Town Council]
- Kent County Council’s Monitoring Officer *[applicable only where the Councillor is serving at both District and County level]*

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Agenda Item 5

Annex 4

Additional help

If you need additional support in relation to this decision notice or future contact with the District Council, 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 Equality Act 2010. We can also help if English is not your first language. Please refer to the attached Community Interpreting Service leaflet or contact our Customer Services on [insert telephone number] or email [insert email address].

Signed:

Date

Print name:

Chairman of the Hearing Panel
Xxxxx District Council

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