

# 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 the [District] Council has adopted for dealing with complaints that an elected or co-opted member of Thanet District Council or a Town or Parish Council established in Thanet has failed to comply with the requirements of the Members Code of Conduct adopted by their Council.

## 2. Interpretation

- 2.1 'the Clerk' means in relation to a Parish Council the officer of the Council duly appointed to conduct the executive functions of the Council in accordance with Section 112 of the Local Government Act 1972
- 2.2 'Complainant' means a person who has submitted a complaint in accordance with these Arrangements alleging that a Subject Member has breached the Members Code of Conduct and the term 'complaint' shall be construed accordingly.
- 2.3 '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 Members Code of Conduct.
- 2.4 'District Council' means Thanet District Council.
- 2.5 'Group Leader' means such member of Thanet District Council who has been identified as Leader of a political group in accordance with a notification given to the proper officer of the Council in accordance with Regulation 8(3)(c) or 8(5)(b) of the Local Government (Committees and Political Groups) Regulations 1990 (as amended).
- 2.6 'Independent Person' means a person or persons appointed by the District Council under section 28(7) of the Localism Act 2011:
- (a) whose views must be sought and taken into account by the District Council before a decision is made on any complaint alleging a breach of the Code of Conduct by a Subject Member; and
  - (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] Council, an officer of another authority or an external investigator.
- 2.8 'Members Code of Conduct' means the Code of Conduct, which the District and Parish Councils have adopted under section 27(2) of the Localism Act 2011 at Annex 1 to these Arrangements

- 2.9 'Monitoring Officer' is a senior officer of the District 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 Members Code of Conduct by a Subject Member. It includes any other officer of the District Council nominated by the Monitoring Officer to act on their behalf in the administration of these arrangements.
- 2.10 'Parish Council' means the relevant Town or Parish Council established within the District of Thanet
- 2.11 'Parties' means the Complainant, Subject Member and the Investigating Officer, as appropriate.
- 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 of a complaint against a Subject Member that has been referred to it by the Monitoring Officer under these arrangements and to determine whether there has been a failure by a Subject Member to comply with the Members Code of Conduct and if so, what action should be taken in relation thereto.
- 2.14 'Subject Member' means an elected member or co-opted member of the District Council or Parish Council] against whom a complaint has been made alleging a failure to comply with the requirements of the Members Code of Conduct.

### **3. Independent Person**

- 3.1 The 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 Council from time to time. The Independent Person (and any substitute) shall be treated as if he were a Member of the Authority for the purposes of the Council's arrangements for indemnifying and insuring Members.

### **4 Making a complaint**

- 4.1 A complaint alleging a breach of the Code of Conduct by a Subject Member must be made in writing and addressed to the Monitoring Officer using the Complaint Form at Annex 1 to these Arrangements. Complainants who find difficulty in making their complaint in writing (e.g. because of a disability), will be offered assistance.
- 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 2 to these Arrangements).

- 4.3 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.

## **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 within 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 within 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 within 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 2 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 in consultation with the Independent Person, providing it is accompanied by supporting evidence that indicates to the Monitoring Officer that it is in the public interest to accept the complaint.

## **7. Role of Independent Person**

- 7.1 The Independent Person must be consulted and have their views taken into account before the Authority 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 - Jurisdiction**

- 8.1 Once receipt of a complaint has been acknowledged the Monitoring Officer will apply the legal jurisdiction tests in accordance with paragraph 1.2 of Annex 2 to these Arrangements. The Monitoring Officer will reject a complaint that in his opinion fails any of these tests and notify the Complainant in writing accordingly. There will be no appeal against this decision
- 8.2 Any complaint not rejected by the Monitoring Officer on the application of the jurisdiction test will be referred to the Standards Assessment Sub Committee for consideration.

## **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 its 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 giving the reasons for his 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.

9.5 There will be no right of appeal against the decision of the Monitoring Officer.

## **10 Informal resolution**

10.1 If the Monitoring Officer decides that a complaint is capable of informal resolution, he will instigate the Informal Disputes Resolution Procedure in accordance with paragraph 6 of Annex 2 to these Arrangements.

## **11. Investigation**

11.1 If the Monitoring Officer decides that a complaint merits formal investigation, he will, within 10 working days of his decision appoint an Investigating Officer to undertake the investigation and inform the Complainant and the Subject Member of the appointment.

11.2 The Investigating Officer will investigate the complaint in accordance with 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 of the decision to appoint an Investigating Officer.

## **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 determine the outcome of the complaint in accordance with Annex 4 to these Arrangements.

## **14 Sanctions**

14.1 Where a Subject Member has been found by the Standards (Hearings) Sub Committee to have breached the Code of Conduct, the Standards (Hearings) Sub Committee may apply any one or more sanctions in accordance with paragraph 4 of Annex 4 to these Arrangements.

## **15 Appeal**

15.1 There is no right of appeal for the Complainant or the Subject Member against decisions of the Monitoring Officer or the Standards (Hearings) Sub Committee made under these arrangements.

## **16 Revision of these Arrangements**

16.1 The District Council may by resolution agree to amend these Arrangements and has delegated to the Monitoring Officer and the Standards (Hearings) Sub Committee the right to depart from these Arrangements, where he or they

consider it expedient to do so in order to secure the effective and fair consideration of any complaint.

## PROCEDURE ON RECEIPT OF A COMPLAINT

### 1. Preliminary tests

1.1 The complaint will be assessed by the Monitoring Officer in consultation with the Independent Person against the legal jurisdiction test in paragraph 1.2 below.

#### 1.2 Legal jurisdiction criteria test:

- (a) Did the alleged conduct occur before the adoption of the Code of Conduct?
- (b) Was the person complained of an elected or co-opted member of the District or Parish Council at the time of the alleged conduct?
- (c) Was the person complained of acting in an official capacity at the time of the alleged conduct?
- (d) Did the alleged conduct occur when the person complained of was acting as a member of another authority?
- (e) If the facts could be established as a matter of evidence, could the alleged conduct be capable of a breach of the Code of Conduct?
- (f) The complaint is about dissatisfaction with the District or Parish Council's decisions, policies and priorities, etc.

1.3 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 within 10 working days of receipt of the complaint by the Monitoring Officer. There is no right of appeal against the Monitoring Officer's decision.

#### 1.4 Local Assessment Criteria:

If the complaint satisfies the jurisdiction test, the Monitoring Officer will refer the complaint to the Standards (Assessment) Sub Committee who will make one the recommendations referred to in paragraph 9.1 of these Arrangements to the Monitoring Officer having due regard to the following local assessment criteria. any of which, if satisfied, will create a presumption that it may not be in the public interest to investigate the complaint.

- (a) The complaint is a 'repeat complaint', unless supported by new or further evidence substantiating or indicating that the complaint is exceptionally serious or significant;
- (b) The complaint is anonymous, unless supported by independent documentary evidence substantiating or indicating that the complaint is exceptionally serious or significant;
- (c) No or insufficient information/evidence to substantiate the complaint has been submitted by the Complainant;
- (d) The complaint is malicious, trivial, politically motivated or 'tit-for-tat';
- (e) The Complainant is unreasonably persistent, malicious and/or vexatious;
- (f) The alleged misconduct happened more than three months ago (unless it could not reasonably have been uncovered or discovered earlier and the Complainant has complained promptly after uncovering or discovering the misconduct);
- (g) The complaint is relatively minor and dealing with the complaint would have a disproportionate effect on both public money and 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 a Co-opted Member.

1.5 The Monitoring Officer will then make the final decision taking into account the recommendations of the Standards (Assessment) Sub-Committee. The Monitoring officer will prepare a decision notice giving reasons and the Complainant and Subject Member will be notified accordingly within five working days of receipt of the recommendations of the Standards (Assessment) Sub Committee.



## **2. Notification of Complaint to Subject Member**

2.1 Subject to any representations from the Complainant on confidentiality (see paragraph 5 below), the Monitoring Officer will notify the Subject Member and, where applicable, the Parish Clerk of the complaint.

2.2 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 (see paragraph 4 below). Views received from the Subject Member and/or Parish Clerk after the 10 working day time limit may be taken into account at the discretion of the Monitoring Officer, providing the views are received before the complaint has been referred to the Standards (Assessment) Sub Committee for consideration.

## **3. Asking for additional information**

3.1 The Monitoring Officer may ask the Complainant, the Subject Member and where 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 will at all times have regards to the recommendations of the Standards (Assessment) Sub Committee but subject thereto will make a decision on the merits of the complaint taking into account the local assessment criteria.

4.2 Complaints that engage the local assessment criteria are more likely to be rejected - i.e. the decision will be to take no further action

4.3 Where the Subject Members 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. More information on when it may be appropriate to instigate the informal disputes resolution procedure is given at Paragraph 6 below.

4.4 A complaint is more likely to be referred to investigation when:

- (a) it is serious enough, if proven, to justify the range of sanctions available to the Standards Committee (see paragraph 4 of Annex 4 to these Arrangements;

- (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 (as the case may be) 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.
- 4.5 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 3 to these Arrangements.
- 4.6 If the complaint identifies potential criminal conduct or potential breach of other regulations by the Subject Member or any other person, the Complainant will be advised by the Monitoring Officer to report the complaint to the police or other prosecuting or regulatory authority. In such cases, 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 refer the complaint to the Standards (Assessment) Sub Committee.
- 4.7 The Monitoring Officer in consultation with the Chairman of the relevant Standards (Assessment) Sub Committee will take no further action in respect of a complaint when one or more of the following apply:
- (a) on-going criminal proceedings or a police investigation into the Subject Member's conduct or where the complaint is suspended in accordance with paragraph 4.6 above;
  - (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) on-going investigation by another prosecuting or regulatory authority;
  - (e) genuine long term (3 months or more) unavailability of a key party;
  - (f) serious illness of a key party.
- 4.8 Within twenty working days of receipt of the complaint, the Monitoring Officer will secure consideration of the complaint by the Standards (Assessment) Sub Committee and the Monitoring Officer will make a decision on the complaint and notify the Complainant, Subject Member and where applicable, the Parish Clerk of such decision within seven working days of the date of the meeting of the

Standards (Assessment) Sub Committee. The decision will be in the form of a decision notice which summarises the complaint, records the decision made and gives reasons for such decision. The decision notice will be published on the District Council's website for a minimum of 56 days

- 4.9 Although there is no right of appeal against the Monitoring Officer's decision in the event that the Complainant submits additional relevant information, the Monitoring Officer will consider and decide if the matter warrants further consideration under these Arrangements, in which case it shall be treated as a fresh complaint.

## **5. Confidentiality**

- 5.1 If the Complainant has asked for their identity to be withheld, this request will be considered by the Monitoring Officer.

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

5.4 The Monitoring Officer, in consultation with the Independent Person, will balance whether the public interest in accepting the complaint outweighs the Complainant's wish to have their identity (or that of another person) withheld from the Subject Member. 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.

## **6. Informal resolution**

6.1 These Arrangements enable the Monitoring Officer to resolve complaints informally. In so doing, the Monitoring Officer will consult with the Complainant and the Subject Member 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 (as the case may be); 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/[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 including the whole District/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 in consultation with the Independent Person.

- 6.4 If the Subject Member is agreeable to and complies with the informal resolution process, the Monitoring Officer will report the matter to the Standards Committee and, if applicable, the Parish Council] for information, but will take no further action.
- 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 will report the matter to the Standards Committee.

## 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 the Data Protection Act 1998, 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 fact finding purposes only.
- 1.4 Witnesses will be identified at the investigation stage and their evidence supported by signed and dated witness statements and/or notes of interview 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 Within 10 working days of being appointed, the Investigating Officer will notify the Subject Member and the Complainant of their appointment 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 and that details of the complaint not be 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 terminate their investigation at any point, where they are satisfied that they have sufficient information to enable them to report to the Monitoring Officer.

## **2. The Draft Report**

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

2.2 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 '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.

2.3 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'.

## **3. Consideration of Investigating Officer's final report**

3.1 The Monitoring Officer will review the Investigating Officer's final report and any comments submitted by the Parties, in consultation with the Independent Person.

3.2 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.

3.3 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, he will refer the matter for consideration by the Standards (Hearings) Sub Committee in accordance with the relevant procedure detailed in Annex 4 to these Arrangements.

## **STANDARDS (HEARINGS) SUB COMMITTEE**

### **HEARINGS PROCEDURE**

1. **Rules of procedure**
- 1.1 The Standards (Hearings) Sub Committee consists of three voting elected Members and one non-voting Independent Member drawn from the [Standards] Committee. One of the voting elected Members shall be elected as Chairman. [Where the Subject Member is a Parish Councillor, one of the Town/Parish Representatives on the Standards will also be invited to be present in an advisory capacity and will not have any voting rights.
- 1.2 The quorum for a meeting of the Standards (Hearings) Sub Committee is three elected Members .
- 1.3 The Independent Person's views must be sought and taken into consideration before the Standards (Hearings) Sub Committee 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 Standards (Hearings) Sub Committee in private) but in the event that this is not possible, may instead submit their views on the complaint to the Standards (Hearings) Sub Committee in writing.
- 1.4 The legal requirements for publishing agendas, minutes and calling meetings, will apply to the Standards (Hearings) Sub Committee. 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) will be applied to exclude the public and press from meetings of the Standards (Hearings) Sub Committee where it is likely that confidential or exempt information will be disclosed.
- 1.5 All matters/issues before the Standards (Hearings) Sub Committee will be decided by a simple majority of votes cast, with the Chairman having a second or casting vote.
- 1.6 Where the Subject Member fails to attend the Standards (Hearings) Sub Committee and where the Standards (Hearings) Sub Committee is not satisfied with their explanation for their absence from the hearing, the Standards (Hearings) Sub Committee 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 Standards (Hearings) Sub Committee 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.<sup>1</sup>

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<sup>1</sup> Janik v Standards Board for England & Adjudication Panel for England (2007)

## **2. Right to be accompanied by a representative**

The Subject Member may choose to be accompanied and/or represented at the Standards (Hearings) Sub Committee by a fellow councillor, friend or colleague.

## **3. The conduct of the hearing**

3.1 Subject to paragraph 3.2 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 1.11 above);
- (e) introduction by the Chairman, of members of the Standards (Hearings) Sub Committee, 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.

3.2 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.

3.3 The Standards (Hearings) Sub Committee may adjourn the hearing at any time.

## **3.4 Presentation of the complaint**

- (a) The Investigating Officer presents their report including any documentary evidence or other material and calls their witnesses. No new points will be permitted;
- (b) The Subject Member or their representative may question the Investigating Officer and any witnesses called by the Investigating Officer;
- (c) The Standards (Hearings) Sub Committee may question the Investigating Officer upon the content of their report and any witnesses called by the Investigating Officer.

## **3.5 Presentation of the Subject Member's case**

- (a) The Subject Member or their representative presents their case and calls their witnesses;
- (b) The Investigating Officer may question the Subject Member and any witnesses called by the Subject Member;
- (c) The Standards (Hearings) Sub Committee may question the Subject Member and any witnesses called by the Subject Member.

### 3.6 **Summing up**

- (a) The Investigating Officer sums up the complaint;
- (b) The Subject Member or their representative sums up their case.

### 3.7 **Views/Submissions of the Independent Person**

The Chairman will invite the Independent Person to express their view on whether or not they consider that on the facts presented to the Standards (Hearings) Sub Committee, there has been a breach of the Code of Conduct.

### 3.8 **Deliberations of the Standards (Hearings) Sub Committee**

#### **Deliberation in private**

- (a) The Standards (Hearings) Sub Committee 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.
- (b) The Standards (Hearings) Sub Committee 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.

#### **Announcing decision on facts found**

- 3.9 (a) The Standards (Hearings) Sub Committee will reconvene the hearing in public and the Chairman will announce whether or not on the facts found, the Panel considers that there has been a breach of the Code of Conduct
- (b) Where the Standards (Hearings) Sub Committee 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.
- (c) When deciding whether to apply one or more sanctions, the Standards (Hearings) Sub Committee will ensure that the application of any sanction is reasonable and proportionate to the Subject Member's behaviour. The Standards (Hearings) Sub Committee will consider the following questions along with any other relevant circumstances or other factors specific to the local environment:
  - (i) What was the Subject Member's intention and did they know that they were failing to follow the District/[Parish Council's Code of Conduct?
  - (ii) Did the Subject Member receive advice from officers before the incident and was that advice acted on in good faith?
  - (iii) Has there been a breach of trust?
  - (iv) Has there been financial impropriety, e.g. improper expense claims or procedural irregularities?
  - (v) What was the result/impact of failing to follow the District/Parish Council's Code of Conduct?

- (vi) How serious was the incident?
  - (vii) Does the Subject Member accept that they were at fault?
  - (viii) Did the Subject Member apologise to the relevant persons?
  - (ix) Has the Subject Member previously been reprimanded or warned for similar misconduct?
  - (x) Has the Subject Member previously breached the District/Parish Council's Code of Conduct?
  - (xi) Is there likely to be a repetition of the incident?
- (d) Having heard the representations of the Independent Person, the Subject Member and the Monitoring Officer on the application of sanctions, the Standards (Hearings) Sub Committee will adjourn and deliberate in private.
  - (e) If evidence presented to the Standards (Hearings) Sub Committee highlights other potential breaches of the District/Parish Council's Code of Conduct, then the Chairman will outline the concerns of the Sub Committee and recommend that the matter be referred to the Monitoring Officer as a new complaint.

### **Final Decision**

- 3.10 (a) Where the complaint has a number of aspects, the Standards (Hearings) Sub Committee may reach a finding, apply a sanction and/or make a recommendation on each aspect separately.
- (b) The Standards (Hearings) Sub Committee will make its decision on the balance of probabilities, based on the evidence before it during the hearing.
- (c) Having taken into account the Independent Person, the Subject Member and the Monitoring Officer's representations on the application of sanctions, the Standards (Hearings) Sub Committee will reconvene the hearing in public and the Chairman will announce:
  - (i) 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;
  - (ii) the sanctions (if any) to be applied;
  - (iii) the recommendations (if any) to be made to the District/Parish] Council or Monitoring Officer;
  - (iv) that there is no right of appeal against the Panel's decision and/or recommendations.

## **4. Range of possible sanctions**

- 4.1 Subject to paragraph 4.4 below, where the Standards (Hearings) Sub Committee determines that the Subject Member has failed to comply with the requirements of the Code of Conduct, any one or more of the following sanctions may be applied/recommended:
  - (a) Recommending to the District/Parish Council that the Subject Member be issued with a formal censure (i.e. the issue of an unfavourable opinion or judgement or reprimand) by motion;
  - (b) Recommending to the Subject Member's Group Leader or in the case of an ungrouped Member to the District Council or in the case of a Parish Council

- to the Parish Council that the Subject Member be removed from one or more Committees or Sub-Committees of the District/Parish Council;
- (c) Recommending to the Leader of the District Council that the Subject Member be removed from the Cabinet or removed from particular Portfolio responsibilities;
- (d) Instructing the Monitoring Officer or recommendation to the Parish Council to arrange training for the Subject Member;
- (e) Recommending to the District/Parish Council that the Subject Member be removed from one or more outside appointments to which they have been appointed or nominated by the Council;
- (f) Recommending to the District/Parish Council that it withdraws facilities provided to the Subject Member by the Council, such as a computer, website and/or email and internet access;
- (g) Recommending to the District/Parish Council the exclusion of the Subject Member from the District/Parish Council's offices or other premises, with the exception of meeting rooms as necessary for attending District/Parish Council Committee and Sub-Committee meetings;
- (h) Reporting the findings of the Sub Committee to the District/Parish Council for information;
- (i) Instructing the Monitoring Officer to apply the Informal Disputes Resolution Procedure ;
- (j) Sending a formal letter to the Subject Member;
- (k) Recommending to the District/Parish Council to issue a press release or other form of publicity;
- (l) Publishing its findings in respect of the Subject Member's conduct in such manner as the Sub Committee considers appropriate.

4.2 The Standards (Hearings) Sub Committee has no power to suspend or disqualify the Subject Member or to withdraw basic or special responsibility allowances.

4.3 The Standards (Hearings) Sub Committee may specify that any sanction take effect immediately or take effect at a later date and that the sanction be time limited.

## **5. Publication and notification of the decisions and recommendations of the Standards (Hearings) Sub Committee**

5.1 Within 10 working days of the announcement of the decision and/or recommendations of the Sub Committee, the Monitoring Officer will publish the name of the Subject Member and a summary of the Sub Committee's decision and/or recommendations and reasons for such decisions and recommendations on the District Council's website.

5.2 Within 10 working days of the announcement of the decision and/or recommendations of the Sub Committee, the Monitoring Officer will provide a full written decision and the reasons for the decision, including any recommendations, in the format of the Decision Notice template below to:

- (a) the Subject Member;
- (b) the Complainant;
- (c) [the Clerk to the Parish Council;
- (d) Kent County Council's Standards Committee (*applicable only where the Subject Member is serving at both District and County level*);
- (e) The District Council's Standards Committee (*applicable only where the Subject Member is serving at District and County level*).

5.3 The Monitoring Officer will report the decision and/or recommendations of the Standards (Hearings) Sub Committee to the next ordinary meeting of the Standards Committee.

## TEMPLATE - DECISION NOTICE (of Hearing Panel)

### **Complaint No: xxxx**

On [insert date], the Hearing Panel of the [insert name] 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
- [Clerk to the xxxx Parish/Town Council];
- Kent County Council's Monitoring Officer *[applicable only where the Councillor is serving at both [Borough] [City] [District] and County level]*

### **Additional help**



If you need additional support in relation to this decision notice or future contact with the [Borough] [City] [County] [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

xxxxxxx [Council address]