

STANDARDS COMMITTEE

Friday, 29th November, 2013

2.00 pm

**Wantsum Room, Sessions House, County Hall,
Maidstone**





AGENDA

STANDARDS COMMITTEE

Friday, 29th November, 2013, at 2.00 pm
Wantsum Room, Sessions House, County Hall,
Maidstone

Ask for: **Peter Sass**
Telephone: **01622 694002**

Tea/Coffee will be available 15 minutes before the start of the meeting in the meeting room

Membership

Mr L B Ridings, MBE (Chairman), Mrs A D Allen, Mr D S Daley, Mrs M Elenor,
Mr J A Kite, MBE, Mr C R Pearman and Mr W Scobie

UNRESTRICTED ITEMS

(During these items the meeting is likely to be open to the public)

1. Substitutes/apologies
2. Declarations of Interest
3. Minutes of the meeting held on 6 September 2013 (Pages 5 - 8)
4. Kent Code of Conduct for Members (Pages 9 - 48)
5. Any other urgent business
6. Dates of Future Meetings
Wednesday, 5 March 2014 at 10am
Tuesday, 3 June 2014 at 2pm
Thursday, 24 July 2014 at 2pm
Wednesday, 12 November 2014 at 2pm

EXEMPT ITEMS

(At the time of preparing the agenda there were no exempt items. During any such items which may arise the meeting is likely NOT to be open to the public)

Peter Sass
Head of Democratic Services
(01622) 694002

Thursday, 21 November 2013

Please note that any background documents referred to in the accompanying papers may be inspected by arrangement with the officer responsible for preparing the relevant report.

KENT COUNTY COUNCIL

STANDARDS COMMITTEE

MINUTES of a meeting of the Standards Committee held in the Wantsum Room, Sessions House, County Hall, Maidstone on Friday, 6 September 2013.

PRESENT: Mr L B Ridings, MBE (Chairman), Mrs A D Allen, Mr D S Daley, Mr J A Kite, MBE, Mr R A Latchford, OBE (Substitute for Mrs M Elenor), Mr W Scobie and Mrs P A V Stockell (Substitute for Mr C R Pearman)

ALSO PRESENT:

IN ATTENDANCE: Mr P D Wickenden (Democratic Services Manager (Members)) and Mr G Wild (Director of Governance and Law)

UNRESTRICTED ITEMS

1. Election of Vice Chairman

(Item 2)

Mr L B Ridings MBE moved and Mrs A D Allen seconded that Mr J A Kite MBE be elected Vice Chairman of the Committee.

Carried without a vote

2. Minutes of the former Standards Committee - 23 January 2013

(Item 4)

RESOLVED that the Minutes of the meeting held on 23 January 2013 are correctly recorded and that they be signed by the Chairman.

3. Kent Code of Conduct for Members

(Item 5)

(1) As agreed by the County Council when it approved the Kent Code of Conduct for Members on 19 July 2012 the Secretaries of all Kent Local Authorities have been keeping the Code under review.

(2) The Code is shorter, simpler and less onerous than its predecessors.

(3) Mr Wild reported that the Kent Secretaries had met on a number of occasions over the past year to share information on the operation of the Code and the supporting documentation.

(4) The report before the Committee set out some amendments which were minor in nature, mainly for clarification purposes only, rather than introducing any substantive change, and reflected the fact that all authorities have reported

overwhelmingly on the successful adoption and implementation of the new Code over the past year.

(5) Mr Kite expressed concern over the provisions within the Code relating to:

- (a) the ability of a complainant to retain their anonymity; and
- (b) confidentiality

(6) Whilst Members' accepted that the threshold in the Code for a complainant to remain anonymous, or to have their complaint treated as confidential, were high several Members of the Committee supported the view of Mr Kite that a small Group of Members' should have the opportunity to consider in detail the merit or otherwise of these two provisions being retained within the Code. This Group would also consider the suggested minor amendments put forward by the Secretaries of the Local Authorities across Kent.

(7) RESOLVED that

(a) The proposed report to the County Council be deferred; and

(b) A small group of members be established comprising Mr Ridings, Mr Kite, Mr Latchford, Mr Scobie and Mr Daley who, in conjunction with the Monitoring Officer, should meet to consider the amendment, retention, or otherwise of the sections of the code on anonymous complaints and confidentiality together with the minor amendments proposed by the Secretaries of Kent Local Authorities prior to submitting a suggested amended code and operational arrangements to the County Council for approval.

(Note: It was subsequently decided that it would be more appropriate to bring the proposed amendments to the Code and the operational procedures back to the full Committee)

4. Localism Act 2011 - Member Dispensations

(Item 6)

(1) The Committee noted that the general dispensations that applied to all Members under the 2007 Code of Conduct had been repealed with the introduction of the Localism Act 2011. The general dispensations related to:

- the setting of council tax and related matters;
- determination of the Members' Allowances Scheme;
- the award of ceremonial honours; and
- decisions relating to school meals and school transport.

(2) The Department for Communities and Local Government (DCLG) has confirmed that Members are not required to seek formal dispensation to participate or vote on decisions relating to council tax setting. It considers such dispensations to be unnecessary since council tax liability applies to the population. Therefore, a Member does not need to seek a dispensation in order to participate in discussions or vote on decisions in the council tax setting process or local arrangements for council tax support.

(3) Nevertheless, under section 106 of the Local Government Finance Act 1992, a Member who is in council tax arrears by two months or more is prohibited from voting on matters relating to the council tax and community charges.

(4) The Committee noted that neither the DCLG nor the Localism Act 2011 and its Regulations make any relieving provisions for:

- (a) the approval of an allowance, payment or indemnity to Members; and
- (b) a ceremonial honour given to Members.

(5) The report recommended therefore that the Monitoring Officer be requested to grant such dispensations because without the dispensation, the number of persons prohibited from participating in the approval of the Members' Allowances Scheme and ceremonial honours at County Council meetings would be so great a proportion of the body transacting the business as to impede the transaction of the business, and, granting the dispensation is in the interests of persons living in the Authority's area.

(6) The Committee also requested that the Monitoring Officer consider granting a dispensation in relation to school meals or school transport and travelling expenses, where a Member is a parent or guardian of a child in full-time education, or is a parent governor of a school (unless it relates particularly to the school which the child attends). The Monitoring Officer indicated that he was happy to agree to this additional request.

(7) RESOLVED that the Monitoring Officer has agreed to grant a dispensation to all Council Members from 7 May 2013 to the County Council elections in May 2017 for the following:

- (a) the approval of an allowance, payment or indemnity to Members;
- (b) a ceremonial honour given to Members; and
- (c) school meals or school transport and travelling expenses, where the Member is a parent or guardian of a child in full-time education, or is a parent governor of a school, unless it relates particularly to the school which the child attends.

5. Date of Next Meeting - 13 November 2013

(Item 7)

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By: Gary Cooke, Cabinet Member for Corporate and Democratic Services
Geoff Wild, Director of Governance and Law

To: Standards Committee – 29 November 2013

Subject: Kent Code of Conduct for Members

Summary: This report follows up the concerns expressed by the Committee at its last meeting relation to ‘anonymity’ and ‘confidentiality’

1. Introduction

- (1) At the Committee’s last meeting, when considering the operation of the Kent Code of Conduct for Elected Members (the Code) in the past year and some minor consequential amendments to the Code recommended by the Kent Secretaries, concerns were expressed over two provisions within the Code which it asked to be reviewed. These related to the ability of a complainant to:
 - (a) make a complaint anonymously; and
 - (b) maintain their confidentiality
- (2) The report also addresses a small anomaly raised by Mr George, the Independent Person, concerning the Code and the operational procedures.

2. Code of Conduct for Elected Members – Other Local Authorities

- (1) The Code is operated by ten of the twelve Kent district councils and the Kent Fire and Rescue Service.
- (2) Following discussions at the last meeting, the opportunity has been taken to look at a number of other local authorities to see how they deal with the two provisions on which the Committee has expressed its concern.
- (3) The result is that none of Kent’s nearest neighbour authorities makes reference to confidentiality or anonymity within their Member Code of Conduct, but reference is made to these issues within the guidance notes and procedures for investigating complaints.
- (4) The Committee’s attention is particularly drawn to the Code provisions of Devon, Suffolk, West Sussex and Worcestershire County Councils:
 - (a) Devon

“Anonymous complaints will be rejected unless the complainant requests confidentiality...The Monitoring Officer will also write to the

subject member with details of the complaint, the decision made and the reasons for the decision. The name of the complainant will be disclosed to the subject member unless confidentiality has been requested and the Monitoring Officer considers a request to be justified.”

(b) Suffolk

“In the interests of fairness and natural justice, we believe members who are complained about have a right to know who has made the complaint. We also believe they have a right to be provided with a summary of the complaint. We are unlikely to withhold your identity or the details of your complaint unless you have good reason to believe that:

- you have reasonable grounds for believing that you will be at risk of physical harm if your identity is disclosed; or*
- you are an officer who works closely with the subject member and have reasonable grounds for being afraid of suffering a disadvantage to your employment or of losing your job if your identity is disclosed; or*
- you suffer from a serious health condition and there are medical risks associated with your identity being disclosed.*

Please note that requests for confidentiality or requests for suppression of complaint details will not automatically be granted. The Monitoring Officer will consider the request alongside the substance of your complaint. We will then contact you with the decision. If your request for confidentiality is not granted, we will usually allow you the option of withdrawing your complaint.

However, it is important to understand that in certain exceptional circumstances where the matter complained about is very serious, we can proceed with an investigation or other action and disclose your name even if you have expressly asked us not to.”

(c) West Sussex

“A member will usually be informed as to who has made an allegation against them. Exceptionally, however, the Assessment Sub-Committee may accede to a request for confidentiality by the person making the allegation. The sub-committee will consider any such request alongside its consideration of the substance of the allegation. In deciding whether to accede to the request, the sub-committee shall have regard to all relevant considerations including whether:

- (a) the person making the allegation has a reasonable belief that they will be at risk of harm if their identity is disclosed;*
- (b) that person is an officer who has a reasonable belief that they will be adversely affected in their employment if their identity is disclosed;*

(c) that person suffers from a serious medical condition (of which medical evidence has been provided) and there are medical risks associated with their identity being disclosed.

If the Assessment Sub-Committee decides that there are reasonable grounds for acceding to the request it will also consider whether it is possible to investigate the allegation without disclosing the identity of the person making it.

If the sub-committee refuses to accede to the request, it may give the person making the allegation the opportunity to withdraw it unless the sub-committee concludes that the public interest in proceeding with the investigation outweighs the wishes of the person making the allegation to have their identity withheld.”

(d) Worcestershire County Council

“3.2 Except where he considers that it would be contrary to the public interest or would prejudice the ability of the Investigator to investigate the allegation, the Monitoring Officer will notify in writing the Member against whom the allegation is made, and the Chairman of the Committee:

3.2.1 that the allegation has been referred by him for investigation and determination by the Committee;

3.2.2 the identity of the person making the allegation (unless the Monitoring Officer agrees that identification of the complainant might prejudice the investigation, put the complainant at risk, or anonymity is in the public interest);

3.2.3 the conduct which is the subject of the allegation;

3.2.4 the section(s) of the Code of Conduct which appear to him to be relevant to the allegation;

3.2.5 the procedure which will be followed in respect of the allegation, and

3.2.6 the identity of the Investigator.

At the same time as notifying the Member, the Monitoring Officer will notify the person who made the allegation in writing of the matters set out in paragraphs 3.2.1 to 3.2.4 and 3.2.6 above.”

3. Anonymity of Complainant and Confidentiality

- (1) In light of the above, Members are asked to consider whether or not to remove the paragraphs from the Code relating to both anonymity and confidentiality.
- (2) Attached as an **Appendix** is a tracked change version of the Code and the procedures. These show the effect of removing the two paragraphs relating to anonymity and confidentiality from the procedures. They also reflect some minor changes to the Code recommended by the Kent Secretaries and the Independent Person (see paragraph 4, below).

- (3) The Committee is asked to consider the proposed changes and recommend the Code to the County Council on 12 December 2013.

4. Anomaly identified by Mr M George – Independent Person.

- (1) An alleged complaint of misconduct, which was referred to the Independent Person earlier this year, gave rise to Mr George drawing attention to a small anomaly in the Code and the operational procedures, which he felt was open to differing interpretation.
- (2) The anomaly is as follows. In the Code it says:

"This code applies whenever you act in your capacity as a Member"

Whereas in the operational procedures, on receipt of an alleged complaint, the Monitoring Officer first applies a legal jurisdiction criteria test, one of which refers to:

"Was the person complained of acting in an official capacity at the time of the alleged conduct?"

- (3) Mr George is of the opinion that "official capacity" suggests the undertaking of council business, whereas "act...as a Member" is much wider and, for instance, would include invoking the fact of being a Member in the course of non-council business.
- (4) We therefore recommend for clarity that in the code the word "official" is inserted in front of the word "capacity" in the Code.

5. Recommendations

The Committee is asked to recommend changes to the Kent Code of Conduct for Members for approval by the County Council on 12 December 2013.

Kent Code of Conduct for Members

(adopted by the Council on 19 July 2012)

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 below.
- (C) This Preamble and the Seven Principles of Public Life 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:
 - (i) 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.
 - (ii) Fail to disclose the interest at Meetings where the interest is not entered in the Authority's register.
 - (iii) 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.
 - (iv) 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.
 - (v) 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.
 - (vi) 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.
 - (vii) 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 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 your 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 the Kent County 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 below 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.

Deleted: n elected

"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:

(i) the majority of other council tax payers, ratepayers or inhabitants of the electoral division affected by the decision; or

(ii) (in other cases) the majority of 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 judgment 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. You must comply with this Code whenever you act in your official capacity as a Member or Co-opted Member of the Authority.

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;
 - (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) prevent another person from gaining access to information to which that person is entitled by law;
 - (f) conduct yourself in a manner which could reasonably be regarded as bringing your office or the Authority into disrepute;
 - (g) 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.

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.
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 para 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.

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.

Selflessness. Holders of public office should act solely in terms of the public interest. They should not do so in order to gain financial or other material benefits for themselves, their family, or their friends.

Integrity. Holders of public office should not place themselves under any financial or other obligation to outside individuals or organisations that might seek to influence them in the performance of their official duties.

Objectivity. In carrying out public business, including making public appointments, awarding contracts, or recommending individuals for rewards and benefits, holders of public office should make choices on merit.

Accountability. Holders of public office are accountable for their decisions and actions to the public and must submit themselves to whatever scrutiny is appropriate to their office.

Openness. Holders of public office should be as open as possible about all the decisions and actions that they take. They should give reasons for their decisions and restrict information only when the wider public interest clearly demands.

Honesty. Holders of public office have a duty to declare any private interests relating to their public duties and to take steps to resolve any conflicts arising in a way that protects the public interest.

Leadership. Holders of public office should promote and support these principles by leadership and example.

The Committee on Standards in Public Life was established by the then Prime Minister in October 1994, under the Chairmanship of Lord Nolan, to consider standards of conduct in various areas of public life, and to make recommendations.

DISCLOSABLE PECUNIARY INTERESTS

(as prescribed by regulations)

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 vocation	Any employment, office, trade, profession or vocation carried on for profit or gain.
Sponsorship	Any payment or provision of any other financial benefit (other than from the relevant authority) made or provided within the relevant period in respect of any expenses incurred by M in carrying out duties as a member, or towards the election expenses of M. This includes any payment or financial benefit from a trade union within the meaning of the Trade Union and Labour Relations (Consolidation) Act 1992.
Contracts	Any contract which is made between the relevant person (or a body in which the relevant person has a beneficial interest) and the relevant authority: (a) under which goods or services are to be provided or works are to be executed; and

	(b) which has not been fully discharged.
Land	Any beneficial interest in land which is within the area of the relevant authority.
Licences	Any licence (alone or jointly with others) to occupy land in the area of the relevant authority for a month or longer.
Corporate tenancies	Any tenancy where (to M's knowledge): (a) the landlord is the relevant authority; and (b) the tenant is a body in which the relevant person has a beneficial interest.
Securities	Any beneficial interest in securities of a body where: (a) that body (to M's knowledge) has a place of business or land in the area of the relevant authority; and (b) either (i) the total nominal value of the securities exceeds £25,000 or one hundredth of the total issued share capital of that body; or (ii) if the share capital of that body is of more than one class, the total nominal value of the shares of any one class in which the relevant person has a beneficial interest exceeds one hundredth of the total issued share capital of that class.

Arrangements For Dealing With Code Of Conduct Complaints Under The Localism Act 2011

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1. Context

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

2. Interpretation

- 2.1 'County Council' means the Kent County Council.
- 2.2 'Code of Conduct' means the Code of Conduct, which the County Council has 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 Standards Committee 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 County Council under section 28(7) of the Localism Act 2011:
- (a) whose views must be sought and taken into account by the County Council before a decision is made on any complaint alleging a breach of the Code of Conduct by a Subject Member;
 - (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 County Council, an officer of another authority or an external investigator.
- 2.8 'Monitoring Officer' is a senior officer of the County 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 County Council nominated by the Monitoring Officer to act on their behalf.
- 2.9 'Parties' means the Complainant, Subject Member and the Investigating Officer, as appropriate.

2.10 'Subject Member' means an elected member or co-opted member of the County Council against whom a complaint has been made alleging a breach the Code of Conduct.

3. Appointment of Independent Person

3.1 The County Council will 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 County Council from time to time.

3.2 The Independent Person (and any substitute) will be treated as if they were a member of the County Council for the purposes of the County 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 in writing and addressed to the Monitoring Officer using the Complaint Form included within 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.

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4.2 The Subject Member will normally be informed of the identity of the Complainant and details of the complaint made against them.

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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 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, a Member of the Authority:

- (a) fails to notify the Monitoring Officer of a Disclosable Pecuniary Interest before the end of 28 days beginning with the day on which the Member becomes, or is re-appointed, a Member or Co-opted Member of the Authority;
- (b) fails to disclose a Disclosable Pecuniary Interest at a meeting, where such interest has not already been registered or notified to the Monitoring Officer;
- (c) fails to notify the Monitoring Officer of a Disclosable Pecuniary Interest before the end of 28 days beginning with the day on which the Member discloses it at a meeting, where such interest has not already been registered or notified to the Monitoring Officer;
- (d) takes part in discussions or votes at meetings that relate to the Disclosable Pecuniary Interest, unless a dispensation has been granted;
- (e) knowingly or recklessly provides 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.

Deleted: 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 independent documentary evidence substantiating or indicating to the Monitoring Officer that the complaint is exceptionally serious or significant.¶

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6. Role of Independent Person

~~6.1~~ 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. Deleted: 7

~~7. Preliminary tests~~ Deleted: 8

~~7.1~~ The Monitoring Officer will, in consultation with the Independent Person, put the complaint through a number of preliminary tests, in accordance with paragraph 1 of Annex 1 to these Arrangements. Deleted: 8

~~7.2~~ In the event that the Independent Person is unavailable or unable to act, the time limits specified in paragraph 1 of Annex 1 to these Arrangements (whether without the need for an investigation or before or after an investigation has been commenced or concluded) may be extended as necessary. Deleted: 8

~~8. Informal resolution~~ Deleted: 9

~~8.1~~ The Monitoring Officer, in consultation with the Independent Person, may consider that the complaint can be resolved informally at any stage in accordance with paragraph 6 of Annex 1 to these Arrangements. Deleted: 9

~~9. Investigation~~ Deleted: 10

~~9.1~~ If the Monitoring Officer, in consultation with the Independent Person and the Chairman of the Standards Committee, decides that the complaint merits formal investigation, they will, normally within 10 working days of receiving it, appoint an Investigating Officer to undertake the investigation, and inform the Parties of the appointment. Deleted: 10

~~9.2~~ The Investigating Officer will investigate the complaint in accordance with Annex 2 to these Arrangements. Deleted: 10

~~10. Hearing~~ Deleted: 11

~~10.1~~ If the Monitoring Officer, in consultation with the Independent Person, 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. Deleted: 1

~~11. Sanctions~~ Deleted: 2

~~11.1~~ 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 4 of Annex 3 to these Arrangements. Deleted: 2

~~12. Appeal~~ Deleted: 3

~~12.1~~ There is no right of appeal for the Complainant or the Subject Member against decisions of either the Monitoring Officer or the Hearing Panel. Deleted: 3

~~13. Revision of these Arrangements~~ Deleted: 4

13.1 The County 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.

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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. Preliminary tests

1.1 The complaint will be assessed by the Monitoring Officer alone or in consultation with the Independent Person against the legal jurisdiction test in paragraph 1.2 and, if applicable, the local assessment criteria test in paragraph 1.4 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 a member of the County 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 County 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 with reasons, normally 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 test:

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

- (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;
- (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 3 months ago;
- (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;

Deleted: , unless supported by independent documentary evidence substantiating or indicating that the complaint is exceptionally serious or significant

(l) The complaint is about a person who is no longer a County Councillor or Co-opted Member.

1.5 If one or more of the local assessment criteria applies to the complaint, 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 10 working days of receipt of the complaint by the Monitoring Officer. There is no right of appeal against the Monitoring Officer's decision.

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 of the complaint.

2.2 The Monitoring Officer may invite the Subject Member 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).

Deleted: Views received from the Subject Member 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 Monitoring Officer issues their written decision on how the complaint will be dealt with.

3. Asking for additional information

3.1 The Monitoring Officer may ask the Complainant and the Subject Member 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 (whether without the need for an investigation or before or after the commencement or conclusion of an investigation) seek to resolve the complaint informally in accordance with paragraph 6 below. Where the Subject Member or the Monitoring Officer 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, in consultation with the Independent Person and the Chairman of the Standards Committee, may refer the complaint for 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 3 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 County 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 he 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

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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, in consultation with the Independent Person, will apply the local assessment criteria test in paragraph 1.4 above.

4.5 The Monitoring Officer, in consultation with the Independent Person, will take no action on the complaint when one or more of the following apply:

- (a) on-going criminal proceedings or a 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 20 working days of receipt of the complaint, the Monitoring Officer will notify the Complainant, Subject Member 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; or
- (b) to refer the complaint for investigation; or
- (c) to apply the informal resolution process either before or after an investigation; or
- (d) to refer the complaint to the relevant political group leader for action.

4.7 The decision notice will be published on the County Council's website. There is no right of appeal against the Monitoring Officer's decision. However, 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. Fairness and Natural Justice

5.1 As a matter of fairness and natural justice, the Subject Member will be told who the Complainant is and will also receive details of the complaint.

6. Informal resolution

6.1 The Monitoring Officer may, after consultation with the Independent Person, 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.

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Deleted: 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):

Deleted: If the Complainant has asked for their identity to be withheld, this request will be considered by the Monitoring Officer in consultation with the Independent Person when they initially assess the complaint (see paragraph 1 above).¶ 5.2

Deleted: usually

Deleted: (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 County Council service provision or any tender/contract they may have with or are about to submit to the County 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 aware ... [1]

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 County 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 County Council, demonstrating a lack of awareness, experience or recognition of the particular provisions of the Code of Conduct and/or other County 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 County 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 members, including the whole County Council where it may be useful to address systemic behaviour:

- (a) training;
- (b) conciliation/mediation;
- (c) mentoring;
- (d) apology;
- (e) instituting changes to the County Council's procedures;
- (f) conflict management;
- (g) development of the County Council's protocols;
- (h) other remedial action by the County 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 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 will report the matter to the Standards Committee.



Kent County Council

Code of Conduct 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 independent member of the Standards Committee
- 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

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.

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It is important that you provide all the information you wish to have taken into account by the Monitoring Officer when he (acting in consultation with the Independent Person and the Chairman of the Standards Committee) decides whether to take any action on your complaint. For example:

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- 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.

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

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Deleted: 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".

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

... [2]

Signed: _____

Date: _____

Return Address: The Monitoring Officer
c/o The Head of Democratic Services
Kent County Council
Sessions House
County Hall
Maidstone
Kent ME14 1XQ

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.

Deleted: :

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 Kent County Council. 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 has decided to refer the complaint for investigation.

Potential breaches of the Code of Conduct identified

At this stage, the Monitoring Officer is not required 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
- [Borough] [District] [City] Council's Monitoring Officer (*applicable only where the Subject Member is serving at both [Borough] [District] [City] and County level*).

What happens now?

The complaint will now be investigated under the County 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 County 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:

Send to:

G D Wild
Monitoring Officer
Kent County Council
Sessions House
County Hall
Maidstone
Kent ME14 1XQ

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, Equality 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 or Hearing Panel.

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, 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.

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Hearing Panel Procedure

1. Rules of procedure

- 1.1 The Hearing Panel consists of the Members of the Standards Committee.
- 1.2 The quorum for a meeting of the Hearing Panel is three.
- 1.3 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.
- 1.4 The legal requirements for publishing agendas, minutes and calling meetings, will apply to the Hearing Panel. 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 Hearing Panel where it is likely that confidential or exempt information will be disclosed.
- 1.5 Once a hearing has started, the County Council Rules of Substitution do not apply to the Hearing Panel's proceedings.
- 1.6 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.
- 1.7 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

2. Right to be accompanied by a representative

The Subject Member may choose to be accompanied and/or represented at the Hearing Panel by a fellow councillor, friend or colleague.

3. The conduct of the hearing

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

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 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.

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 Hearing Panel 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 Hearing Panel 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 Hearing Panel 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 Hearing Panel, there has been a breach of the Code of Conduct.

3.8 **Deliberations of the Hearing Panel**

Deliberation in private

- (a) 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.
- (b) 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 from whom.

Announcing decision on facts found

- 3.9 (a) The Hearing Panel 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 Hearing Panel finds 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 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:
 - (i) What was the Subject Member's intention and did they know that they were failing to follow the County 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 County 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 of the County 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 Hearing Panel will adjourn and deliberate in private.
- (e) If evidence presented to the Hearing Panel highlights other potential breaches of the County Council's Code of Conduct, then the Chairman will outline the Hearing Panel's concerns and recommend that the matter be referred to the Monitoring Officer as a new complaint.

Formal Announcement of Decision

- 3.10 (a) Where the complaint has a number of aspects, the Hearing Panel may reach a finding, apply a sanction and/or make a recommendation on each aspect separately.
- (b) The Hearing Panel will make its decision on the balance of probabilities, based on the evidence before it during the hearing.
- (c) Having taken into account the representations of the Independent Person, the Subject Member and the Monitoring Officer's on the application of sanctions, the Hearing Panel 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 County 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 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) Recommending to the County 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 a ungrouped Subject Member, to the County Council that they be removed from committees or sub-committees of the Council;
- (c) Recommending to the Leader of the County Council that the Subject Member be removed from the Cabinet or removed from particular Portfolio responsibilities;
- (d) Instructing the Monitoring Officer to arrange training for the Subject Member;
- (e) Recommending to the County Council that the Subject Member be removed from one or more outside appointments to which they have been appointed or nominated by the County Council;
- (f) Recommending to the County 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 County Council the exclusion of the Subject Member from the County Council's offices or other premises, with the exception of meeting rooms as necessary for attending County Council committee and sub-committee meetings;
- (h) Reporting the Panel's findings to the County Council for information;
- (i) Instructing the Monitoring Officer to apply the informal resolution process;
- (j) Sending a formal letter to the Subject Member;
- (k) Recommending to the County 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 Panel considers appropriate.

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

4.3 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.

5. Publication and notification of the Hearing Panel's decision and recommendations

5.1 Within 10 working days of the Hearing Panel's announcement of its decision and recommendations, the Monitoring Officer will publish the name of the Subject Member and a summary of the Hearing Panel's decision and recommendations and reasons for the decision and recommendations on the County Council's website.

5.2 Within 10 working days of the announcement of the Hearing Panel's decision, 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 relevant Borough, District or City Council's Standards Committee (*applicable only where the Subject Member is serving at both Borough/District/City and County level*).

5.3 The Monitoring Officer will report the Hearing Panel's decision and recommendations to a meeting of the Standards Committee for information.

Deleted: the next ordinary

TEMPLATE - DECISION NOTICE (of Hearing Panel)

Complaint No: xxxx

On [insert date], the Hearing Panel of the Kent County Council considered a report of an investigation into the alleged conduct of [insert name of councillor], a member of Kent County Council. 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 Kent County Council's 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
- the relevant Borough, District or City Council's Standards Committee (*applicable only where the Subject Member is serving at both Borough/District/City and County level*).

Additional help

If you need additional support in relation to this decision notice or future contact with the County 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:

Send to:

Chairman of the Hearing Panel
Kent County Council
Sessions House
County Hall
Maidstone
Kent ME14 1XQ

Standards Committee Terms of Reference

To discharge the functions (other than those which are reserved to Council) as set out in Part 1, Chapter 7 of the Localism Act 2011 including:

1. To promote and maintain high standards of conduct by Members and Co-opted Members of the County Council and to make recommendations to Council on improving standards.
2. To advise the County Council on the adoption of or revisions to its Code of Conduct.
3. To advise, train or arrange to train County Members and Co-opted Members on matters relating to the Code of Conduct.
4. To assist the County Councillors and Co-opted Members to observe their respective Codes of Conduct.
5. To monitor and assess the operation and effectiveness of the Code of Conduct and to review and manage the Arrangements for dealing with Code of Conduct Complaints.
6. To advise on local ethical governance protocols and procedures.
7. To maintain oversight of the County Council's arrangements for dealing with Code of Conduct complaints.
8. To act as an advisory body in respect of ethical governance matters.
9. To monitor and review the procedures for the Register of Members' Interests and declaring gifts and hospitality.
10. To receive reports from the Monitoring Officer on the number and nature of complaints received and action taken as a result in consultation with the Independent Person.
11. To receive an annual report on the County Council's ethical governance arrangements.
12. To appointment a sub-committee to deal with Code of Conduct complaints, following investigation.
13. To grant dispensations pursuant to section 33(2) of the Localism Act 2011 and paragraph 8 of the adopted Code of Conduct where:
 - (i) without the dispensation, the representation of different political groups on the body transacting the business would be so upset as to alter the outcome of any vote on the matter.
 - (ii) that the authority considers that the dispensation is in the interests of persons living in its area; or
 - (iii) where the Committee considers that it is otherwise appropriate to grant a dispensation.

PROCEDURE RULES

1. A Member with a Disclosable Pecuniary Interest or Other Significant Interest in a matter to be considered, or being considered at a meeting 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 5 of this Procedure Rule); and unless they have been granted a dispensation:
 - (c) not participate in any discussion of, or vote taken on, the matter at the meeting; and
 - (d) withdraw from the meeting room whenever it becomes apparent that the business is being considered; and
 - (e) not seek improperly to influence a decision about that business.

2. A Member with an Other Significant Interest, may attend a meeting but only for the purpose of making representations, answering questions or giving evidence relating to the business, provided that the public are also allowed to attend the meeting for the same purpose, whether under a statutory right or otherwise. The Member will withdraw from the meeting room immediately after making representations, answering questions or giving evidence.
3. Where a Member with a Disclosable Pecuniary Interest or Other Significant Interest in a matter under discussion (unless a dispensation has been granted in accordance with paragraph 1 of this Procedure Rule), chooses to participate in the discussion and vote, the Chairman will refuse to count the 'vote' of the Member concerned, for the 'vote' will have been cast illegally and cannot be considered to be a vote at all.
4. The Chairman may request that a Member declare a Disclosable Pecuniary Interest or an Other Significant Interest and, if appropriate, leave the meeting room, should they have reason to believe that the provisions of the Code of Conduct and/or this Procedure Rule are being breached.
5. Where a Disclosable Pecuniary Interest, or an Other Significant Interest has been agreed by the Monitoring Officer as being a Sensitive Interest, the Member need only disclose the existence of the interest but not its nature.
6. This Procedure Rule applies to a Cabinet member acting alone under portfolio powers and to a local Member who discharges functions at divisional level.
7. Disclosable Pecuniary Interests and Other Significant Interests will be reported to the Standards Committee on an annual basis.

MONITORING OFFICER DELEGATIONS

1. Appointed as Proper Officer for the purposes of receiving applications for dispensation pursuant to section 33(1) of the Localism Act 2011.
2. To grant dispensations to Members pursuant to section 33(2) of the Localism Act 2011 and paragraph 8 of the adopted Code of Conduct to speak only or to speak and vote where:
 - (iv) so many members of the decision-making body have disclosable pecuniary interests in a matter that it would impede the transaction of the business; or
 - (v) without a dispensation, no member of the executive would be able to participate on a particular item of business.
3. Appointed to receive complaints relating to alleged breaches of the adopted Code of Conduct and to process complaints in accordance with the adopted Arrangements for dealing with Code of Conduct Complaints.
4. The right to depart from the arrangements for dealing with code of conduct complaints, where considered expedient to do so in order to secure the effective and fair consideration of any matter.