

STANDARDS COMMITTEE

Thursday, 31st July, 2025

11.30 am

Council Chamber, Sessions House





AGENDA

STANDARDS COMMITTEE

Thursday, 31st July, 2025, at 11.30 am
Council Chamber, Sessions House, County Hall,
Maidstone

Ask for: Ruth Emberley
Telephone: 03000 410690

Membership: (7)

Reform UK (5)

Georgia Foster, Maxwell Harrison,
Sharon Roots, Ryan Waters and
Richard Palmer

Liberal Democrat (1)

John Moreland

Conservative (1)

Nigel Williams

UNRESTRICTED ITEMS

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

- 1. Introduction / Webcasting Announcement**
- 2. Election of Chair**
- 3. Apologies and Substitutes**
- 4. Declarations of Interest by Members in items on the agenda**
- 5. Minutes of the meeting held on 20 March 2024 (Pages 1 - 4)**
- 6. Introduction to Standards Regime - visual presentation**
- 7. Appointment of Hearing Panel (Pages 5 - 6)**
- 8. Proposed Revisions to Arrangements for Dealing with Code of Conduct Complaints (Pages 7 - 54)**

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)

Benjamin Watts
General Counsel
03000 416814

Wednesday, 23 July 2025

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KENT COUNTY COUNCIL

STANDARDS COMMITTEE

MINUTES of a meeting of the Standards Committee held in the Council Chamber, Sessions House, County Hall, Maidstone on Wednesday, 20 March 2024.

PRESENT: Mr J A Kite, MBE (Chair), Mr D Jeffrey, Mr C Simkins, Dr L Sullivan, Mr P J Oakford and Mr B J Sweetland

ALSO PRESENT: Mr B Watts (General Counsel) and Mr T Godfrey (Senior Governance Manager)

UNRESTRICTED ITEMS

1. Apologies

(Item)

Apologies were received from Ms Parfitt and Mr Love for whom respectively Mr Oakford and Mr Sweetland were present as substitutes.

2. Declarations of Interest

(Item 2)

There were no declarations of interest.

3. Minutes of the meeting held on 9 May 2022

(Item 3)

RESOLVED that the minutes of the meeting held 9 May 2022 were a correct record and that a paper copy be signed by the Chair.

4. Verbal Update from Monitoring Officer

(Item 4)

- a. Mr Watts said that as part of the actions from the Annual Governance Statement, he had committed to producing a report on Member behaviour and the Standards Committee would see any concerns raised.
- b. It was felt that the culture had changed for Members after the pandemic and the nature of Standards complaints had also changed. Members making complaints under the Code of Conduct about another Member had been unheard of prior to the current term of office but these were now making up the majority of complaints submitted.
- c. Then, Members resolved:

That, under Section 100A of the Local Government Act 1972, the press and public be excluded from the meeting for the following business on the grounds

that it involves the likely disclosure of exempt information as defined in Paragraph 2 of part 1 of Schedule 12A of the Act (information which is likely to reveal the identity of an individual).

- d. It was agreed that the exempt discussion take place following item 6 and the meeting continued in open session.

5. Proposed Revisions to the Kent Code of Member Conduct (Item 5)

- a. Mr Godfrey introduced the report. Members were asked to consider amendments to the Kent Code of Conduct for Members. The proposed amendments built on changes recommended by the Kent Secretaries Group in response to the publication of the LGA Model Code of Conduct and discussed by the Committee at its previous meeting.
- b. Further to questions from Members, it was noted that:
- The model code produced by the LGA responded to the recommendations made by the Committee for Standards in Public Life (CSPL), which had raised concerns about increased incidences of poor behaviour nationally in the local government sector.
 - The majority of the CSPL recommendations were for central government and at the time of the meeting, the legislation remained unchanged.
 - The Kent Secretaries Group had concerns about the LGA Model Code wholesale but drew on it in producing a revised Kent Code.
 - It was recognised that there would be continuous development and there would be further work done in the future.
 - The changes to the wording of the Kent Code of Member Conduct were proposed and agreed.
- c. Resolved to recommend to County Council that the Constitution be amended with the changes agreed by this Committee.

6. Proposed Revisions to Arrangements for Dealing with Code of Conduct Complaints (Item 6)

- a. Mr Godfrey introduced the report.
- b. In response to questions from Members, it was noted that:
- The Kent Secretaries Group had reviewed the procedures, with the intention of making the arrangements more coherent and practical, based on experience.
 - The revised arrangements are intended to be accessible and easy to use, not legalistic.
- c. Concerns were raised about how malicious complaints about Members would be handled and there was a request that there be a way of reporting back when there had been no breach of the Code of Conduct.

- d. Members requested that the differences between the current arrangements and the proposed changes be presented more clearly.
- e. RESOLVED that the proposed revised arrangements for handling Member complaints be brought back to the Standards Committee with clarity on the proposed changes.

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From: Ben Watts - General Counsel
To: The Standards Committee - 31 July 2025
Subject: Appointment of a Hearing Panel
Classification: **Unrestricted**

1. Introduction

- a. As set out in another paper on this Agenda, the Standards Committee Hearing Panel is convened whenever a complaint against a Member has reached the stage where a formal investigation has been completed and the Monitoring Officer considers that informal resolution is not appropriate or unlikely to be achieved.
 - b. It is appropriate and in line with normal practice for the Standards Committee to appoint a Hearing Panel at an early stage in the Council term so that the Panel is established and ready to be convened if and when necessary.
 - c. The Panel consists of three Members drawn from the Standards Committee.
 - d. In line with past practice, the recommendation is that the Hearing Panel consists of:
 - 1. The Chair of this Committee.
 - 2. The Vice-Chair of this Committee.
 - 3. One other Member.
 - e. Political proportionality rules apply and therefore two of the Panel Members must be from the largest Political Group on the Council and the third should be drawn from the second largest.
 - f. In the event of an appointed Panel Member being unavailable, or having a conflict of interest, then the relevant Group will be asked to name a substitute in accordance with normal procedures.
-

2. Recommendation:

The Standards Committee is asked to appoint a Hearing Panel.

3. Appendices

None.

4. Background Documents

None.

5. Report Author and Relevant Director

Ben Watts, General Counsel
03000 416814
benjamin.watts@kent.gov.uk

From: Ben Watts, General Counsel

To: The Standards Committee, 31 July 2025

Subject: Proposed Revisions to Arrangements for Dealing with Code of Conduct Complaints

Classification: **Unrestricted**

1. Introduction

- a) On 20 March 2024, this Committee discussed the proposed revisions to the Kent Code of Member Conduct drafted by the Kent Secretaries. The Committee made further amendments to the draft and agreed to recommend to County Council that the Code of Conduct, as amended, be adopted by the Council. This was discussed at the meeting of 23 May 2024.
- b) After the March 2024 meeting of this Committee, there was an agenda item to discuss updated arrangements for handling Code of Member Conduct complaints. The new proposed arrangements were the product of a Kent Secretaries working group. Standards Committee Members were of the view that it was not sufficiently clear as to the differences between the proposals and current arrangements. The item was therefore postponed to the current meeting. As set out in the next section, further information is provided on the nature of the changes being proposed to the current arrangements.
- c) The decision to review the arrangements followed on from the work on updating the Code of Member Conduct. As with the Code, the legislative framework remains essentially the same as previously, but the revision of the Code provided the opportunity to look at the arrangements as well. On 21 September 2021, the Local Government Association produced new guidance on handling Member Code of Conduct Complaints¹. This was also used by the working group to test the current arrangements and make suggested revisions.
- d) Under this Committee's terms of reference, it is responsible for maintaining oversight of the Council's arrangements for dealing with Code of Conduct complaints. This report is asking the Committee to approve the revised arrangements, as set out in the next section.

2. The Arrangements

- a) There are four parts to the arrangements – the overarching document and three annexes. These are:
 - i. Arrangements for Dealing with Code of Conduct Complaints under The Localism Act 2011.
 - ii. Annex 1 – Procedure on Receipt of a Complaints.
 - iii. Annex 2 – Procedure for Investigating the Complaint.
 - iv. Annex 3 – Hearing Panel Procedure.

¹ <https://www.local.gov.uk/publications/guidance/peer-review-model-code-conduct-complaints-handling>

- b) Collectively these documents are a guide for the public, this Committee, and everyone involved with a complaint at any level. The current arrangements are set out on the KCC website in the section providing information on making a complaint about a County Councillor.²

3. Proposed Changes

- a) The changes being proposed to the arrangements as a result of the Kent Secretaries working group are marked up as amendments to the current ones in the appendix.
- b) What is not shown are local customisations. Firstly, Kent County Council does not have the role Borough/City/District Councils do in connection with Parish Councils and complaints. These references have been removed. Secondly, a few terms have been changed to be consistent with common KCC practice (particularly 'Member' for 'Councillor' and 'section' for 'paragraph' when making cross-references internal to the documents). These do not constitute substantive changes in their own right.
- c) Many of the changes are minor or not substantive in nature – changes in layout for example, and the addition or removal of some small sections of wording to make the document clearer and more accessible.
- d) The substantive changes are set out in the following section. Showing the changes has affected the layout of some sections. These will be corrected before being published.

4. Revisions

- a) **The roles of Monitoring Officer and Independent Person.** Throughout the document, the respective roles of the Monitoring Officer and Independent Person are clarified. In line with the legislation, it is set out where there is a requirement for the Independent Person to be consulted and where they may be consulted by relevant parties.
- b) **Anonymous complaints.** The current process has a bar on accepting anonymous complaints. In the updated LGA guidance states the following – “Authorities should not normally allow anonymous complaints as that would be against the principles of transparency and fairness and make matters much more difficult to investigate. However, there may be exceptional compelling reasons why an anonymous complaint could be accepted without detriment to the process and where the allegation can be evidenced without reference to the complainant.”
 - i. The proposed changes build on this principle and set out a framework for how a complainants request for anonymity will be managed. An summary is set out in section 6 of the overview document and the bulk of the text on this issue in section 5 in Annex 1. Consequential changes are proposed elsewhere to make the document consistent with the proposed framework.

- c) **Timetable changes.** Reflecting on the practical demands of managing a complaints process, the time allowed for some of the stages has been amended:
- i. 15 working days are given as the time to acknowledge receipt of a complaint. It is currently 5.
 - ii. 30 working days are given to appoint an investigating officer once the decision has been made to appoint. It is currently 10.
 - iii. 60 working days are given for informing the complainant of the results of the legal and local jurisdiction tests from the date of receipt of the complaint. It is currently 10.
 - iv. within 90 working days of receipt of the complaint, the Monitoring Officer will notify the Complainant, Subject Member of their decision and reasons for how they intend to proceed with the complaint. It is currently 20.
 - v. Investigating Officer will notify the Subject Member and the Complainant of their appointment within 20 working days of being appointed. It is currently 10.
 - vi. 10 days is currently given for publishing the decision of a Hearing Panel. No timeline is included in the revised arrangements, but the presumption will be that it is done as soon as possible.
- d) **DPI wording.** In the overview document, there is clearer wording on Declarations of Pecuniary Interest (DPIs) in section 5.
- e) **Discontinuations and deferrals.** In the overview document, there is a new section (14) setting out in brief the circumstances in which action on a complaint may be discontinued, deferred or referred back to the Monitoring Officer. This is picked up in new section 4.5 in Annex 1 and new sections 3 and 4 in Annex 2. While these are all options under the current process, there is a lack of detail around them.
- f) **Legal jurisdiction test.** In Annex 1, the legal jurisdiction test is made clearer (section 2).
- g) **Local assessment criteria test.** The wording in 2.3(d) of Annex 1 in the local assessment criteria test has been amended to exclude generic malicious and relatively minor complaints.
- h) **New breaches.** In Annex 2, a new section (2) has been added to make it explicit what the procedure will be if evidence of new breaches of the Kent Code are uncovered during the course of an investigation. In sum, the investigation can only consider the original complaint.
- i) **Confidentiality.** In Annex 2, a new section (7) covers confidentiality and the legal requirements concerning handling information.
- j) **Subject member representatives.** Annex 3 amends the section (section 3) on the Subject member's right to be accompanied by a representative by clarifying that the Hearing Panel have the right to ask the representative to leave if they are disruptive.
- k) **Aggravating and mitigating factors.** Sections 10.4 and 10.5 are new to Annex 3 and set out examples of aggravating and mitigating factors which the Hearing Panel may take into account when considering whether to apply sanctions.

- l) **Sanctions.** Section 12 of Annex 3 refreshes the examples list of possible sanctions.
- m) **Decision summary.** Section 13 of Annex 3 sets out more clearly what any decision summary should include.
- n) **No right of appeal.** Section 14 of Annex 3 adds a reminder that there is no right of appeal against a decision.

5. Next Steps

- a) Following approval by this Committee, the relevant section on the website giving information on Member complaints will be updated.
- b) The Committee is also being asked to delegate to the Monitoring Officer the implementation of the new arrangements. This will ensure a smooth transition and will ensure that the information is available on the website prior to coming into effect.

6. Recommendation:

The Standards Committee is asked to:

- a. Approve the revised arrangements for handling Member complaints; and
- b. Delegate to the Monitoring Officer the authority to take the necessary actions to implement the new arrangements.

7. Appendices

- Appendix – Proposed changes to the arrangements for handling Member complaints. Includes:
 - Arrangements for Dealing with Code of Conduct Complaints under The Localism Act 2011.
 - Annex 1 – Procedure on Receipt of a Complaints.
 - Annex 2 – Procedure for Investigating the Complaint.
 - Annex 3 – Hearing Panel Procedure.

8. Background Documents

None.

9. Report Author and Relevant Director

Ben Watts, General Counsel
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~~Arrangements For Dealing With Code Of Conduct Complaints Under The
Localism Act 2011~~

~~1. ARRANGEMENTS FOR DEALING WITH CODE OF CONDUCT
COMPLAINTS UNDER THE LOCALISM ACT 2011~~

1. **Context**

~~1.1.4~~ These Arrangements are made under section 28 of the Localism Act 2011. They set out the process that ~~the Kent~~ 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.~~
2. **Interpretation**

2.1- 'County ~~Council~~ Council' means ~~the~~ Kent County Council.

~~2.2.2~~ ~~'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'~~ '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'~~ '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'~~ 'Hearing Panel' means the panel appointed by the ~~Standards Committee~~ County Council to determine the outcome of any complaint alleging a breach of the Code of Conduct by a Subject Member in accordance with these Arrangements.

2.6 ~~'Independent Person'~~ '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~~ are to be sought and taken into account by the County Council before ~~it makes its decision~~ it is made ~~on an allegation that it has decided to investigate and whose views may be sought by the County Council at any complaint alleging a breach of the Code of Conduct by a Subject Member; other stage;~~

~~(b)~~ (b) who may be consulted by the Subject Member about the complaint.

~~'Investigating Officer'~~

~~2.7~~ 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.

~~'Monitoring Officer'~~

~~2.8~~ 2.8 'Monitoring Officer' is a senior officer of the County Council who has statutory responsibility for maintaining the Register of ~~Members~~ 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.

~~'Parties'~~

~~2.9~~ 2.9 'Parties' means the Complainant, Subject Member and the Investigating Officer, as appropriate.

~~'Subject Member'~~

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

3.- Appointment of Independent Person

3.1- The County Council ~~will~~shall appoint the Independent Person (and any substitute) in accordance with the requirements of section 27 of the Localism Act 2011 upon such terms as to remuneration and expenses as may be determined by the County Council from time to time.

3.2- The Independent Person (and any substitute) ~~will~~shall be treated as if they were a memberMember of the County Council for the purposes of the County Council'sCouncil's arrangements for indemnifying and insuring its Members.

4.- Making a complaint

4.1- A complaint alleging a breach of the Code of Conduct by a Subject Member must be made either:

(a) in writing and addressed to the Monitoring Officer using the Complaint Form included within Annex 1 to these Arrangements. ~~Complainants who find difficulty in making their complaint in writing (e.g. or,~~

(b) via the set out on the Council's website.

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

4.2- The Subject Member will normally be informed of the identity of the Complainant and details of the complaint made against them-; but the Complainant's identity and/or details of their complaint may be withheld at the Complainant's request if it appears to the Monitoring Officer that there are sound reasons for granting such a request (refer to section 5 of Annex 1 to these Arrangements).

4.3- The -Monitoring -Officer will -normally acknowledge receipt -of -a -complaint within -515 working days of receiving it. At the same time (and subject to para-section 4.2 above), the Monitoring Officer will send a copy of the complaint to the Subject Member in accordance with paragraph -2section 1 of Annex 1 to these Arrangements.

5.- Criminal conduct

5.1- In accordance with section 34 of the Localism Act 2011, it is a criminal offence if, without reasonable excuse, a Subject 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 they become, or is are re-elected or re-appointed, as a Member or Co-opted Member of the authority;
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;~~

(b) 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 they become aware of it, where they are acting alone in the course of discharging a function of the authority (including making a decision in relation to the matter) and the interest is not already registered or is not the subject of a pending notification to the Monitoring Officer;

(c) fails to disclose a Disclosable Pecuniary Interest at a meeting, where such interest has not already been registered or notified to the Monitoring Officer;

~~(e)~~ (d) fails to notify the Monitoring Officer of a Disclosable Pecuniary Interest before the end of 28 days beginning with the day they disclose it at a meeting, where such interest has not already been registered or notified to the Monitoring Officer;

(a) (e) takes part in discussions or votes at meetings that relate to the Disclosable Pecuniary Interest, unless a dispensation has been granted;

(d) (f) 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~~section 4(4) of Annex 1 to these Arrangements.

6.- Anonymous complaints

6.1- Complainants must provide their full name and address. ~~Anonymous complaints~~An anonymous complaint will ~~not only~~ be accepted by the Monitoring Officer, providing it is accompanied by corroborating evidence that indicates to the Monitoring Officer that it is in the public interest to accept the complaint. The Monitoring Officer may consult the Independent Person.

7.- Role of Independent Person

7.1- The Independent Person must be consulted and have their views taken into account before the ~~Authority~~County Council makes a finding as to whether a Member has failed to comply with the Code or decides on action to be taken in respect of that Member. ~~At any other stage of the complaints process under these Arrangements, the Independent Person may be consulted by the Monitoring Officer and/or the Subject Member.~~

8.- Preliminary tests

8.1- The ~~Monitoring Officer will, in consultation with the Independent Person, put~~ put the complaint through a number of preliminary tests, in accordance with ~~paragraph 4~~section 2 of Annex 1 to these Arrangements and may do so in consultation with the Independent Person.

8.2- In the event that the Independent Person is being consulted and is unavailable or unable to act, the time limits specified in ~~paragraph 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 section 2 of Annex 1 may either be extended as necessary by the Monitoring Officer or the Monitoring Officer may act alone in taking the decision or action.

9.- Informal resolution

9.1- The Monitoring Officer, ~~in consultation with the Independent Person,~~ may consider that the complaint can be resolved informally at any stage in accordance with

~~paragraph 5~~section 6 of ~~Annex 4~~Annex 1 to these Arrangements ~~and may do so in consultation with the Independent Person.~~

10.- Investigation

- 10.1 ~~If the Monitoring Officer, in consultation with the Independent Person and the Chairman of the Standards Committee,~~Monitoring Officer decides that the complaint merits formal investigation, they will, normally within ~~40~~30 working days of receiving it, appoint an Investigating Officer to undertake the investigation, and inform the Parties of the appointment.
- 10.2 ~~The~~ Investigating Officer will investigate the complaint in accordance with Annex 2 to these Arrangements.

11.- Hearing

- 11.1 ~~If the Monitoring Officer, 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.

12.- Sanctions

- 12.1 ~~Where a Subject Member has been found by the Hearing Panel to have breached the Code of Conduct, the Hearing Panel may apply any one or more sanctions in accordance with~~ paragraph ~~4~~section 12 of Annex 3 to these Arrangements.

13.- Appeal

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

14.- Discontinuance of Action

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

15. Revision of these Arrangements

- ⁴⁴
15.1 ~~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.

Annexes

Annex 1 – Procedure on Receipt of ~~A~~a Complaint

Annex 2 – Procedure ~~For~~for Investigating ~~The~~the Complaint

Annex 3 – Hearing Panel Procedure

ANNEX 1

~~Procedure On Receipt Of A~~ **PROCEDURE ON RECEIPT OF A COMPLAINT**

1. Notification of Complaint to Subject Member

~~4-1.1~~ Subject to any representations from the Complainant on confidentiality (see section 5 below), the Monitoring Officer will notify the Subject Member of the complaint.

~~1.2~~ The Monitoring Officer may invite the Subject Member to submit initial views on the complaint, which will be taken into account by the Monitoring Officer when they decide how to deal with the complaint (see section 4 below).

2. Preliminary ~~tests~~ Tests

~~2.1.4~~ The complaint will be assessed by the Monitoring Officer ~~alone or in consultation with the Independent Person~~ against the legal jurisdiction test in paragraph ~~4~~section 2.2 and, if applicable, the local assessment criteria test in paragraph ~~4.4 below~~section 2.4 below. The Monitoring Officer may assess the complaint in consultation with the Independent Person.

~~4.2.2~~ Legal jurisdiction criteria test:

- (a) Did the alleged conduct occur before the adoption of the Code of Conduct? If the answer to this is 'Yes' the test is failed.
- (b) Was the person complained of a member of the County Council at the time of the alleged conduct? If the answer to this is 'No' the test is failed.
- (c) Was the person complained of acting in an official capacity at the time of the alleged conduct? If the answer to this is 'No' the test is failed.
- (d) Did the alleged conduct occur when the person complained of was acting as a member of another authority? If the answer to this is 'Yes' the test is failed.
- (e) If the facts could be established as a matter of evidence, could the alleged conduct be capable of supporting a finding of a breach of the Code of Conduct? If the answer to this is 'No' the test is failed.

~~(f) The complaint is about dissatisfaction with the County Council's decisions, policies and priorities, processes, and governance etc.~~

~~1.3(f) ? If the complaint fails one or more of the jurisdiction tests, no further action will answer to this is 'Yes' the test is failed and the matter should be taken raised by the Monitoring Officer and the complaint will be rejected. The Complainant will be notified accordingly complainant directly 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 Council via its general complaints process.~~

1.4 2.3 Local assessment criteria test:

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

(a) The complaint is ~~a 'repeat complaint', unless supported by new or further evidence substantiating or indicating that substantially the same as a complaint is exceptionally serious or significant; which has previously been made.~~

~~(b) The complaint is anonymous;~~

~~(b) The complaint is anonymous, unless the Monitoring Officer is of the view, on the basis of corroborating evidence that it is in the public interest to accept the complaint. The Monitoring Officer may consult the Independent Person.~~

(c) No ~~or~~ insufficient information/evidence to ~~substantiate the~~ complaint has ~~been~~ submitted by the Complainant; ~~;~~

(d) The complaint is malicious, ~~trivial, politically motivated or 'tit for tat'; or relatively minor, and, in the view of the Monitoring Officer, the public interest would not be served by taking further action.~~

(e) The Complainant is unreasonably persistent, ~~malicious~~ and/or vexatious; ~~;~~

(f) The alleged misconduct happened more than 3 months ~~ago; prior to the submission of the complaint.~~

(g) ~~The complaint is relatively minor and dealing~~ Dealing with the complaint would have a disproportionate effect on both public money and ~~or~~ officers' and Members' time; ~~;~~

(h) The circumstances have changed so much that there would be little benefit arising from an investigation or other action; ~~;~~

- (i) The complaint has been the subject of an investigation or other action and there is nothing more to be gained by further action being taken~~:-~~
- (j) The complaint is such that it is unlikely that an investigation will be able to come to a firm conclusion on the matter, e.g.~~:-~~ where there is no firm evidence on the matter.
~~on the matter;~~
- (k) The complaint is about a deceased person~~:-~~
- (l) The complaint is about a person who is no longer a County ~~Councillor or~~
~~Co-opted Member~~ or Co-opted Member.

~~4.5~~

~~2.4~~ 4.5 If ~~the complaint fails~~ one or more of the ~~local assessment criteria applies to the complaint~~ 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 4060 working days of receipt of the complaint by the Monitoring Officer. —There is no right of appeal against the Monitoring Officer's decision.~~

~~2.~~ 2. **Notification of complaint to Subject Member**

~~2.1 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.~~

~~2.2 The Subject Member may submit initial views on the complaint, normally within 10 working days of receipt of the details of the complaint from the Monitoring Officer. These views will be taken into account by the Monitoring Officer when deciding how to deal with the complaint (see paragraph 4 below).~~

~~3.-~~ 3.- **Asking for ~~additional information~~ Additional Information**

~~3.1-~~ 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.~~ 4. **What ~~process~~ Process to ~~apply - informal resolution~~ Apply - Informal Resolution or ~~investigation~~ Investigation and/or ~~no action?~~ No Action?**

~~4.1~~ 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 5~~ section 6 below. ~~—Where the Subject Member or the Monitoring Officer~~ or the County Council make a reasonable offer of informal resolution, but the Complainant is not willing to accept this offer, the Monitoring Officer will take account of this in deciding whether the complaint merits formal investigation.

~~4.2~~ 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(a)~~ It is serious enough, if proven, to justify the range of sanctions available to the Standards Committee (see ~~paragraph 4~~section 12 of Annex 3 to these Arrangements); ~~or~~

~~(b)~~ ~~the(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~~ 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~~ 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 ~~they~~the Monitoring Officer may pass the complaint to the police. Where a complainant has been advised to refer a matter to the police or the Monitoring Officer has referred the matter to the police the complaints process under these Arrangements will be suspended, pending a decision/action by the police or other prosecuting or regulatory authority. ~~Where the police or other prosecuting or regulatory authority decide to take no action on the complaint,~~ the Monitoring Officer will lift the suspension and, ~~in consultation with the Independent Person,~~ will apply the local assessment criteria test in ~~paragraph 4~~section 2.4 above.

~~4.5~~ 4.5 The Monitoring Officer, ~~in consultation with the Independent Person,~~ will ~~may~~ decide to take no action or to defer further action on the complaint ~~when~~whilst one or more of the following apply:

~~on~~

~~(a)~~ ~~On~~-going criminal proceedings or ~~a~~-police investigation into the Subject

~~(a)~~ Member's conduct;

investigation

(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; ~~:-~~

~~the~~

(c) The investigation might prejudice another investigation or court proceedings; ~~:-~~

~~genuine~~

(d) Genuine long term (3 months or more) unavailability of a key party; ~~:-~~

~~serious~~

~~(e)~~ (e) Serious illness of a key party.

4.6 4.6 Normally within 2090 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); ~~:-~~

~~not~~

(a) Not to refer the complaint for investigation; ~~:-or:-~~

~~to refer~~

(b) Refer the complaint for investigation; ~~:-or:-~~

~~to apply~~

(c) Apply the informal resolution process either before or after an investigation; ~~:-or:-~~

~~to refer~~

~~(d)~~ (d) Refer the complaint to the relevant political group leader for action.

~~The decision notice will be published on the County Council's website.~~

4.7 There is no right of appeal against the Monitoring Officer's decision. ~~However,~~
~~in the event that~~

5. Confidentiality

~~4.7—5.1~~ If the Complainant ~~submits additional relevant information, has~~
~~asked for their identity to be withheld, this request will be considered by 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 when they initially assess the complaint.~~

5. Informal resolution

5.1 (see section 2 above). The Monitoring Officer may, ~~after consultation with~~ consult the Independent Person.

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

- (a) Is either vulnerable or at risk of threat, harm, or reprisal.
- (b) May suffer intimidation or be victimised or harassed.
- (c) Works closely with the Subject Member and are afraid of the consequences, e.g., fear of losing their job.
- (d) Suffers from a serious health condition and there are medical risks associated with their identity being disclosed (medical evidence will need to be provided to substantiate this).
- (e) May receive less favourable treatment because of the seniority of the person they are complaining about in terms of any existing 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 awareness: disclosing the complaint or part of it may inform the community about matters of general concern.
- (c) Justice to an individual: the balance of the public interest may favour disclosure of the complaint to the Subject Member when it may not be in the public interest to disclose it to the world at large.

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

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

6. Informal Resolution

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

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

- (a) The Subject Member appears to have a poor understanding of the Code of Conduct and/or related 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.

~~5.3~~ 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, councillors~~ including the whole County ~~or~~ Council where it may be useful to address systemic behaviour:

~~(a) training;~~

~~conciliation~~

~~(a) Training.~~

~~(b) Conciliation/mediation;~~

~~(c) mentoring;~~

~~(d) apology;~~

~~instituting~~

~~(c) Mentoring.~~

~~(d) Apology.~~

(e) Instituting changes to the County Council's procedures;

(f) ~~conflict~~Conflict management;

(g) ~~development~~Development of the County Council's protocols;

(h) ~~other~~Other remedial action by the County Council;

(i) ~~other~~Other steps (other than investigation) if it appears appropriate to the Monitoring Officer ~~in consultation with the Independent Person.~~

~~5.4~~ 6.4 If the Subject Member is agreeable to and complies with the informal resolution process, the Monitoring Officer ~~will~~may report the matter to the Standards Committee for information, but will take no further action against the Subject Member.

~~5.5~~ 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~~may report the matter to the Standards Committee.



Kent County Council

~~Code of Conduct~~ EXAMPLE TEMPLATE – COMPLAINT FORM

Complaint Form

Your Details

~~1.~~ 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.~~ 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) _____~~

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

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

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

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

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

Signed: _____

____ Date _____

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

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

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

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

<u>Signed:</u>	_____
<u>Date:</u>	_____

Return Address: _____

The Monitoring Officer ~~Kent~~

County

Council Sessions

~~House~~, County Hall, County Road, Maidstone, Kent, ME15 8TG

~~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.

Q1. Ethnic Group

Q1. Ethnic Group

☐

Female

White:

British

Irish

Any other white background

Black or Black British:

Caribbean

African

Any other black background

British

Irish

Any other white background

Black or black British

Asian or Asian British:

Indian

Pakistani

Bangladeshi

Any other Asian background

Q2. Sex

Caribbean

African

Any other Black background

Asian or Asian British:

Male

Q3. Partnership Status

Indian

Pakistani

Bangladeshi

Any other Asian background

Single

Married/Civil Partner

Separated

Divorced

Widow/Widower

Inserted Cells

Inserted Cells

Inserted Cells

Inserted Cells

Inserted Cells

Inserted Cells

Q4. Age Group

Under 16

16-19

20-24

25-59

60-64

65 and above

Inserted Cells

Inserted Cells

Inserted Cells

Inserted Cells

Q5. Do you have a disability?

Male
Female
Prefer not to say

Q3. Partnership Status

Hearing difficulty
Other
Under 16
16 — 19
20 — 24
25 — 59
60 — 64
65 and above

☐

Yes

No

☐

Q5. Do you have a disability?

Yes

No

Q6. What is the nature of your disability?

Single
Married/Civil Partner
Separated/Divorced
Widow/Widower

Q6. What is the nature of your disability?

☐

Difficulty getting around

Mental Health problems

Learning difficulty

Difficulty seeing

Hearing difficulty

Other

☐

Q4. Age Group

Difficulty getting around
Mental health problems
Learning difficulty
Difficulty seeing

☐
☐
☐
☐
☐
☐

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.

-

Inserted Cells

Inserted Cells

Inserted Cells

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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~~.[insert authority name]. A general summary of the complaint is set out below.

Complaint summary

[Summarise complaint in numbered ~~paragraphs~~.sections]

Consultation with Independent Person

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

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 or able to decide if the Code of Conduct has been breached.- They are only considering if there is enough information which shows a potential breach of the Code of Conduct that warrants referral for investigation.

DRAFT

The Monitoring Officer considers that the alleged conduct, if proven, may amount to a breach of the following ~~paragraphs~~sections 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~~sections are relevant, during the course of the investigation.

[detail relevant Code of Conduct ~~paragraphs~~sections]

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].

DRAFT

Signed:-

Date:-

Print name:

Send to:

Monitoring Officer
Kent County
Council
Sessions
House
County Hall
Maidstone
~~Maidstone~~
Kent ME14 1XQ

Procedure For Investigating The Complaint

1. PROCEDURE FOR INVESTIGATING THE COMPLAINT

1. Preliminaries

~~1.1~~

~~1.1~~ The Investigating Officer will be appointed by the Monitoring Officer and will be aware of their obligations under UK GDPR and the Data Protection Act ~~1998~~, Equality 2018, Equalities Act 2010, the Human Rights Act 1998, and other relevant legislation.

~~1.2~~

~~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~~

~~1.3~~ The Subject Member and the Complainant will be advised that the investigation is for ~~fact finding~~ the purposes only of establishing facts and making recommendations as to whether the facts disclose a breach of the relevant code of conduct.

~~1.4~~

~~1.4~~ Witnesses will be identified at the investigation stage and wherever possible their evidence supported by signed and dated witness statements and/or notes of interview interviews with the Investigating Officer. ~~The Investigating Officer cannot compel the attendance of witnesses or their co-operation.~~

~~1.5~~

~~1.5~~ The Investigating Officer will not make recommendations on sanctions.

~~1.6 Within 10 working days of being appointed, the~~

~~1.6~~ The Investigating Officer will notify the Subject Member and the Complainant of their appointment ~~and~~, normally within 20 working days of being appointed, and:

~~provide~~

(a) Provide details of the complaint to the Subject Member;

DRAFT

- (b) ~~detail~~Detail the procedure to be followed in respect of the investigation and the relevant timescales for responses and concluding the investigation~~;-~~
- (c) ~~detail~~Detail the sections of the Code of Conduct that appear to be relevant to the complaint~~;-~~
- (d) ~~request~~Request contact details of any potential witnesses~~;-~~
- (e) ~~require~~Require that confidentiality is maintained throughout the duration of the investigation and the procedures contemplated by this Annex and that details of the complaint are not to 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.

~~4.7~~ 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 ~~Members~~Member's case and which are relevant to the complaint.

~~4.8~~ 1.8 The Investigating Officer may ~~terminate~~conclude 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.- Evidence of New Breaches

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

~~2.4~~

3. Referring Cases Back to the Monitoring Officer

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

DRAFT

continue, for example, if:

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

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

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

3.4 If the investigation has been deferred or ended the Subject Member and the complainant should be notified of the decision and where possible provided with timescales within which the matter will be dealt with if it has been deferred. This would not always be possible, however, particularly if the matter has been referred to the police.

4. Deferring an Investigation

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

- (a) There are ongoing criminal proceedings or a police investigation into the Subject Member's conduct.
- (b) The investigation might prejudice another investigation or court

DRAFT

proceeding.

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

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

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

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

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

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

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

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

5. The Draft Report

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

~~5.2.2~~ 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~~'DRAFT and CONFIDENTIAL' and will detail:

DRAFT

~~the~~

- (a) ~~The~~ relevant provisions of the law and the relevant ~~paragraphs~~sections of the ~~Code of Conduct~~;
- (b) ~~a~~A summary of the complaint;
- (c) ~~the~~The Subject ~~Member's~~Member's response to the complaint;
- (d) ~~relevant~~Relevant information, explanations, etc, which the Investigation Officer has obtained in the course of the investigation;
- (e) ~~a~~A list of any documents relevant to the matter;
- (f) ~~a~~A list of those persons/organisations who have been interviewed;
- (g) ~~a~~A statement of the Investigating ~~Officer's~~Officer's draft findings of fact and reasons;
- (h) ~~the~~The Investigating ~~Officer's~~Officer's conclusion as to whether the Subject Member has or has not failed to comply with the ~~Authority's~~Authority's Code of Conduct;
- (i) ~~that~~That the Investigating Officer will present a final report once they have considered any comments received on the draft.

²

5.3— Once the Investigating Officer has received any responses from the Subject Member and/or the Complainant, they will finalise the draft report and make their final conclusions and recommendations to the Monitoring Officer. ~~The~~ report will be clearly labelled '~~FINAL~~'FINAL and CONFIDENTIAL'.

~~3.~~

6. Consideration of Investigating ~~Officer's final report~~ Officer's Final Report

³

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

³

6.2— Where, on the basis of the Investigating ~~Officer's~~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~~Officer's decision.

DRAFT

~~6.3.3.~~ Where, on the basis of the Investigating ~~Officer's~~ 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:

~~take~~

- (a) ~~Take~~ seek no action; or
- (b) ~~Seek~~ refer informal resolution; or
- ~~(c)~~ (c) Refer the matter for consideration by the Hearing Panel in accordance with the relevant procedure detailed in Annex 3 to these Arrangements.

7. Confidentiality

7.1 The procedures detailed in this Annex are all treated as confidential to those involved in the process. Some details (which would include names and addresses) may be personal data, subject to data protection laws, some content of statements or reports may be otherwise private or confidential or, may be potentially defamatory if published.

7.2 Whilst non-members are not covered by the Code of Conduct (e.g., members of the public, witnesses and non-member complainants) if, they do decide to publish details of the complaint they may expose themselves to liability in defamation (if information turns out to be untrue) or to other liabilities e.g., for breach of confidence, or for breach of data protection laws which could arise even where the information is true. Non-members may wish to seek their own legal advice.

Hearing Panel Procedure

~~1.~~

1. Pre-Hearing Procedure

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

~~Identify which~~

- (a) ~~Which~~ facts in the investigation report are agreed and which are in dispute;~~;~~
- ~~Determine whether any~~
- (b) ~~Whether there is~~ fresh evidence not mentioned in the investigation report ~~may which will~~ be put before the hearing;~~;~~
- ~~Determine whether~~
- (c) ~~Whether there is~~ documentary evidence which a party ~~wishes intends~~ to put before the hearing ~~is admissible~~;~~;~~
- ~~Establish whether~~
- (d) ~~Whether~~ the parties intend to attend;~~;~~ whether the parties intend to be represented in accordance with ~~paragraph 2~~ section 3 and, if so, by whom; ~~and~~ the number and identity of witnesses to be called;~~;~~
- ~~Determine whether~~
- (e) ~~Whether the Subject Member requests~~ the whole or any part of the hearing ~~should to~~ be held in private;~~;~~ (f) ~~Determine whether~~
- (e)(f) ~~Whether the Subject Member requests~~ the whole or any part of the investigation report or other relevant documents ~~should to~~ be withheld from the public.

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

~~2.~~

2. Rules of ~~procedure~~ Procedure

2.1- The Hearing Panel consists of ~~the three voting elected~~ Members ~~of drawn from~~ the Standards Committee~~;~~, one of whom shall be elected as Chair.

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

2.3- The Independent Person's views must be sought and taken into consideration before the Hearing Panel takes any decision on whether the Subject Member's

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conduct constitutes a failure to comply with the Code of Conduct and as to any sanction to be taken following a finding of failure to comply with the Code of Conduct. ~~The Independent Person should normally be present throughout the hearing (but not during the deliberations of the Hearing Panel in private) but in the event that this is not possible, may instead submit their views on the complaint to the Hearing Panel in writing.~~

- 2.4— The legal requirements for publishing agendas, minutes, and calling meetings, will apply to the Hearing Panel. ~~The~~ The presumption is that the hearing will be held in public no earlier than 14 working days after the Monitoring Officer has copied the Investigating Officer's final report to the complainant and the Subject Member. ~~Schedule 12A Local Government Act 1972 (as amended) will~~ may 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.~~
- 2.5— Once a hearing has started, the County ~~Council~~ Council's Rules of Substitution do not apply to the Hearing Panel's proceedings.
- 2.6— All matters/issues before the Hearing Panel will be decided by a simple majority of votes cast, with the ~~Chairman~~ Chair having a second or casting vote.
- 2.7— Where the Subject Member fails to attend the Hearing Panel and where the Hearing Panel is not satisfied with their explanation for their absence from the hearing, the Hearing Panel may in the first instance, have regard to any written representations submitted by the Subject Member and may resolve to proceed with the hearing in the Subject Member's absence and make a determination or, if satisfied with the Subject ~~Member's~~ 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~~ expeditiously.¹

~~3.~~

3. Right to be ~~accompanied~~ Accompanied by a ~~representative~~ Representative

~~3.1~~

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

- 3.1 ~~4.~~ solicitor, or by any other person they wish. The ~~conduct of panel~~ does, however, have the right to require a representative to leave if that representative disrupts the hearing. However, an appropriate warning will be given before requiring a representative to leave the hearing.

4. Order of Business

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

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4.1- Subject to ~~paragraph~~section 4.2 below, the order of business will be as follows:-

~~elect~~

- (a) ~~Elect~~ a ~~Chairman;~~ Chair.
- ~~apologies~~
- (b) Apologies for absence; ~~(c) declarations.~~
- ~~(b)(c)~~ Declarations of interests;-
- ~~in~~
- (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~~section 2.7 above);-.
- ~~introduction~~
- (e) Introduction by the ~~Chairman~~Chair, of members of the Hearing Panel, the Independent Person, Monitoring Officer, Investigating Officer, legal advisor, complainant and the Subject Member and their representative;-.
- ~~to~~
- (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;-.
- ~~to~~
- (g) To determine whether the public/press are to be excluded from any part of the meeting and/or whether any documents (or parts thereof) should be withheld from the public/press.

4.2 4.2 The ~~Chairman~~Chair may exercise their discretion and amend the order of business, where they consider that it is expedient to do so in order to secure the effective and fair consideration of any matter.

4.3 4.3 The Hearing Panel may adjourn the hearing at any time.

5- Presentation of the ~~complaint~~ Complaint

- 5.1- ~~The~~ Monitoring Officer, legal advisor, or ~~chairman~~Chair may ~~each~~ make an introductory statement outlining the nature of the complaint and the purpose of the hearing, and the procedure to be followed.
- 5.2- ~~The~~ Investigating Officer presents their report including any ~~documentary~~ evidence or other material and calls their witnesses. ~~No~~ new points will be permitted;-.
- 5.3- ~~The~~ Subject Member or their representative may question the Investigating Officer and any witnesses called by the Investigating Officer;-.

DRAFT

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

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

6. 6. Presentation of the Subject Member's ~~case~~ Case

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

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

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

7.- Summing up Up

~~7.1~~ 7.1 The Investigating Officer sums up the complaint.

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

8.- Views/Submissions of the Independent Person

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

**9.
Deliberations of the Hearing Panel**

9. Deliberation to be in private Private

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

9.2- The Hearing Panel may at any time come out of private session and reconvene the hearing in public, in order to seek additional evidence from the Investigating

DRAFT

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~~by whom.

~~10.~~

10. Announcing ~~decision~~Decision on ~~facts found~~Facts Found

10.1- The Hearing Panel will reconvene the hearing in public (~~if the public have not been excluded from the proceedings~~) and the ~~Chairman~~Chair will announce whether or not on the facts found, the Panel considers that there has been a breach of the Code of Conduct.

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

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

~~(i)~~(a) 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)~~(b) 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?~~

(c) Has there been a breach of trust?

~~(iv)~~(d) Has there been financial impropriety, e.g., improper expense claims or procedural irregularities?

~~(v)~~(e) What was the result/impact of failing to follow the County Council's Code of Conduct?

~~(vi)~~(f) How serious was the incident?

~~(vii)~~(g) Does the Subject Member accept that they were at fault?

~~(viii)~~(h) Did the Subject Member apologise to the relevant ~~persons?~~ person(s)?

~~(ix)~~(i) Has the Subject Member previously been reprimanded or warned for similar misconduct?

DRAFT

~~(*)~~(j) Has the Subject Member previously breached ~~of~~ the County Council's Code of Conduct?

~~(*)~~(k) Is there likely to be a repetition of the incident?

10.4 Mitigating factors may include:

- (a) An honestly held, although mistaken, view that the action concerned did not constitute a failure to follow the provisions of the Code of Conduct, particularly where such a view has been formed after taking appropriate advice.
- (b) A Member's previous record of good service.
- (c) Substantiated evidence that the Member's actions have been affected by ill-health.
- (d) Recognition that there has been a failure to follow the Code.
- (e) Co-operation in rectifying the effects of that failure.
- (f) An apology to affected persons where that is appropriate.
- (g) Self-reporting of the breach by the Member.
- (h) Compliance with the Code since the events giving rise to the complaint.

10.5 Aggravating factors may include:

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

~~10.4~~ 10.6 Having heard the representations of the Independent Person, the Subject Member and the Monitoring Officer on the application of sanctions, the Hearing Panel will adjourn and deliberate in private.

DRAFT

~~10.5 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.~~

~~11. Formal Announcement of~~

11. Final Decision

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

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

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

~~the~~

~~(i)(a) The Panel's decision as to whether or not the Subject Member has failed to comply with the Code of Conduct, and the principal reasons for the decision;~~

~~the~~

~~(ii)(b) The sanctions (if any) to be applied;~~

~~the~~

~~(iii)(c) The recommendations (if any) to be made to the County Council or Monitoring Officer;~~

~~that~~

~~(iv)(d) That there is no right of appeal against the Panel's decision and/or recommendations.~~

12.- Range of ~~possible sanctions~~ Possible Sanctions or Other Actions

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

Recommending

~~(a) Report its findings in respect of the Subject Member's conduct to the County Council that the Subject Member be issued with.~~

~~(a)(b) Issue a formal censure (i.e. the issue of an unfavourable opinion or judgement or reprimand) by motion;~~

~~Recommending~~

~~(b)(c) Recommend to the leader of the authority that the Subject Member's Group Leader, or in the case of a ungrouped Subject Member, to the County Council~~

DRAFT

- ~~that they be removed from committees or sub-committees~~positions of the Council;~~responsibility.~~
- ~~(c) — Recommending to the Leader of the County Council that the Subject Member be removed from the Cabinet or removed from particular Portfolio responsibilities;~~
~~Instructing~~
- (d) Instruct the Monitoring Officer to arrange training for the Subject Member;~~;~~
~~Recommending~~
- (e) Recommend to ~~the County~~ Council that the Subject Member be removed from ~~one or more all~~ outside appointments ~~to which they have been appointed or nominated by the County Council;~~authority.
~~Recommending~~
- (f) Recommend to ~~the County~~ Council that it withdraws facilities provided to the Subject Member by the ~~Council;~~authority for a specified period, such as a computer, website and/or email and internet access;~~;~~
~~Recommending~~
- (g) Recommend to ~~the County~~ Council ~~the exclusion of that it excludes~~ the Subject Member from the ~~County Council's~~authority's offices or other premises for a specified period, with the exception of meeting rooms as necessary for attending ~~County Council,~~ committee and sub-committee meetings;~~;~~ and/or restricts contact with officers to named officers only.
~~(h) — Reporting the Panel's findings to the County Council for information;~~
- ~~(i) — Instructing the Monitoring Officer to apply the informal resolution process;~~
~~Sending a formal letter to~~
- ~~(h) — If relevant recommend to Council that the Subject Member be removed from their role as leader of the authority.~~
- ~~(i) — If relevant recommend to the secretary or appropriate official of a political group that the Member be removed as group leader or other position of responsibility.~~
- ~~(j) — Recommend that the Subject Member;~~
- ~~(k) — Recommending to the County Council to issue a press release or other form of publicity;~~
- ~~(l)(i) — Publishing its findings make an apology in respect of the Subject Member's conduct in such manner as the Panel considers appropriate or take some other action to resolve the matter.~~

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

~~12.2~~ 12.3 The Hearing Panel has no power to suspend or disqualify the Subject Member or to withdraw basic or special responsibility allowances.

DRAFT

~~12.3~~ **12.4** The Hearing Panel may specify that any sanction take effect immediately or take effect at a later date and that the sanction be time limited.

~~13. Publication and notification of~~

13. Publicising the Hearing Panel's Findings

~~13.1~~ **13.1.** Within 10 working days of the Hearing Panel's announcement of its ~~The Monitoring Officer should arrange for a~~ decision and recommendations

13.1 notice to be published on the website of any authorities concerned. A template decision and recommendations notice is appended which may be used for these purposes.

13.2 If the Monitoring Officer will publish the name of panel finds that the Subject Member ~~and a~~ did not fail to follow the authority's Code of Conduct, the public summary of the Hearing Panel's must say this and give reasons for this finding.

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

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

(b) Outline what happened.

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

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

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

(b) Outline what happened.

(c) Explain what sanction has been imposed.

(d) Give reasons for the decision and recommendations on the County Council's website made by the panel.

~~13.2~~ 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).

DRAFT

~~13.3 The Monitoring Officer will report the Hearing Panel's decision and recommendations to a meeting of the Standards Committee for information.~~

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

14. Appeals

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

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TEMPLATE – DECISION NOTICE (of Hearing Panel)

Complaint No: xxxx

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

Complaint summary

[Summarise complaint in numbered ~~paragraphs~~sections 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~~sections]

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~~sections 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~~
Officer]

The Hearing Panel also made the following recommendation(s)

[Detail recommendations]

Sanctions applied

The breach of the Kent County ~~Council's~~Council Code of Conduct warrants a [detail sanctions applied].

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Appeal

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

Notification of decision

This decision notice is sent to the:

~~Councillor~~

• ~~Member~~ [name of ~~Councillor~~] ~~Member~~

• Complainant

• ~~the relevant Monitoring Officer~~

• ~~Borough, /City/ District or City Council's Standards Committee (Monitoring Officer~~
~~[applicable only where the Subject Member is serving at both~~
~~Borough/ District/ City and County level] -]~~

DRAFT

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:

~~Chairman~~

~~Chair~~ of the Hearing
Panel ~~c/o Democratic~~
~~Services~~
Kent County
Council ~~Sessions~~
~~House County Hall~~
~~Maidstone~~
~~Kent ME14 1XQ~~

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