

**STANDARDS COMMITTEE**

**Wednesday, 20th March, 2024**

**2.00 pm**

**Council Chamber, Sessions House, County Hall,  
Maidstone**







## AGENDA

### STANDARDS COMMITTEE

**Wednesday, 20th March, 2024, at 2.00 pm**  
**Council Chamber, Sessions House, County Hall,**  
**Maidstone**

Ask for: **Emily Kennedy**  
Telephone: **03000 419625**

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

#### **Membership**

Mr J A Kite, MBE (Chair), Rich Lehmann, Mr D Jeffrey, Mr R C Love, OBE, Mrs L Parfitt-Reid, Mr C Simkins and Dr L Sullivan

Please note: that the unrestricted part of this meeting may be filmed by any member of the public or press present.

By entering into this room you are consenting to being filmed. If you do not wish to have your image captured please let the Clerk know immediately.

#### **UNRESTRICTED ITEMS**

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

1. Apologies
2. Declarations of Interest
3. Minutes of the meeting held on 9 May 2022 (Pages 1 - 6)
4. Verbal Update from Monitoring Officer
5. Proposed Revisions to the Kent Code of Member Conduct (Pages 7 - 22)
6. Proposed Revisions to Arrangements for Dealing with Code of Conduct Complaints (Pages 23 - 60)

#### **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

**Tuesday, 12 March 2024**

**KENT COUNTY COUNCIL****STANDARDS COMMITTEE**

MINUTES of a meeting of the Standards Committee held in the Council Chamber, Sessions House, County Hall, Maidstone on Monday, 9 May 2022.

PRESENT: Mr J A Kite, MBE (Chair), Mrs S V Hohler, Rich Lehmann, Mr R C Love, OBE, Mr C Simkins, Dr L Sullivan and Mr B J Sweetland

IN ATTENDANCE: Mr T Godfrey (Senior Governance Manager), Mr B Watts (General Counsel) and Mr J Cook (Democratic Services Manager)

**UNRESTRICTED ITEMS****1. Election of Vice-Chair**

*(Item 2)*

- 1) The Chair called for nominations – Mr Love proposed Dr Sullivan, Mr Lehmann seconded the nomination. No other nominations were received.

RESOLVED that Dr Sullivan be elected as Vice-Chair.

**2. Declarations of Interest**

*(Item 3)*

No declarations were made.

**3. Minutes of the meeting held on 25 May 2021**

*(Item 4)*

RESOLVED that the minutes of the meeting held on 27 May 2021 were a correct record and that they signed by the Chair.

**4. Appointment of Hearing Panel**

*(Item 5)*

- 1) Mr Watts provided an overview the Hearing Panel arrangements necessary within the Member complaints process. He explained that when complaints are progressed to the relevant stage it was necessary for them to be considered by a formal committee session in the form of a Hearing Panel made up of KCC Elected Members.
- 2) Mr Watts explained an Independent barrister be involved in any case progressing to that stage, presenting at the Hearing and conducting relevant investigations.
- 3) Responding to questions about the process and timeframes for complaints, Mr Watts and Mr Godfrey explained that it was necessary for the Committee to establish the Hearing Panel and its arrangements to ensure all was in place in

the event that any complaint reached the relevant stage. The membership arrangements were discussed, including clarification that while named individuals were sought as part of the establishment of the Hearing Panel, political proportionality and normal substitute arrangements would apply.

- 4) Mr Watts advised the Committee that no complaints had reached the Hearing Panel stage in previous Council terms under the current Standards regime. He further clarified that the Hearing Panel was the final stage of the complaints process and was only used if an informal resolution was not suitable and when an independent person had reviewed the matter and the required barrister had undertaken the relevant investigation.

RESOLVED that the Standards Hearing Panel be established, consisting of three Members; the Chair and Vice-Chair of the Standards Committee and Mr Rory Love identified as the initial members to be called upon in the event of a Hearing Panel being required.

## **5. Standards, Training and Culture**

*(Item 6)*

- 1) Mr Watts introduced the report, outlining the previous activity undertaken to communicate with Members regarding the expectations of Member Behaviour under the Code of Conduct. He noted that it was not for Officers to interfere or intervene in political matters or discourse but that this relied on Members having the training and support to undertake their roles in an appropriate way, in line with the required behaviours, conduct rules and KCC culture. Mr Watts confirmed that a key point of this item with Members on this subject to ensure any options, training arrangements or support was informed properly by Member views and requirements. In the longer term, the item recommendation sought to ensure that the planning for training on this matter should be a priority for the Member Development Sub-Committee.
- 2) Member discussed the issue of training timeframes and mandatory requirements. It was noted that historically, KCC had not made non-legally required training mandatory. It was suggested by Members that training should take place for any Hearing Panel before considering a complaint. On the wider culture and behaviours piece, including the impact of standards failures, Members discussed the value of exploring external input and advice regarding best practice and research data to support any training or support needs. Other Members highlighted the need to explore the issue with wider public through engagement and consultation.
- 3) The Committee recognised the importance of Members being reminded of their responsibilities around appropriate conduct and ethics. It was suggested that further work should be undertaken in due course to explore options and mechanisms that would support improved behaviour and culture within the terms of the Code of Conduct.

RESOLVED that;

- the Member Development Sub-Committee be asked to prioritise consideration of Member training on Standards within its work programme;
- Standards Training should, where possible, be provided to any Hearing Panel in advance of any case;

## **6. Government Response to the Committee on Standards in Public Life** (Item 7)

- 1) Mr Godfrey (Senior Governance Manager) introduced the report, which set out the implications of the Government Response to the report on Local Government Ethical Standards, published by the Committee on Standards in Public Life. In response to the report, the Local Government Association had developed a recommended model code but it was highlighted that the development of this had been challenging as it preceded the release of the Government's response. As per the response, Government had opted to not make substantive changes to the legislation regarding complaints.
- 2) Mr Godfrey advised that key points to note included that Government was supportive of changing DPI requirements which had previously defaulted to expecting that Members home addresses were published and it was also supportive of increasing statutory protections for certain statutory posts, in line with the need to ensure that relevant Officers must have assurance they can give appropriate required challenge without fear of repercussion.
- 3) Mr Godfrey summarised that the no major changes to the Kent Code were required as a result of the Government response and the limits of what can be covered or managed within the Code remained the same.
- 4) Responding to questions from Members, Mr Godfrey and Mr Watts explained that;
  - the timeframe for any of the formal changes was not yet confirmed by legislation or regulations may be brought forward in due course.
  - The Government was not required to accept and implement any or all of the recommendations from the Committee on Standards in Public Life.
  - The six-month suspension sanction raised in the report, while not rejected by Government, had not been supported in the response and it was therefore unlikely to be progressed.

RESOLVED that the report be noted.

## **7. Amendment to the Kent Code** (Item 8)

- 1) To support the consideration and provide context, Mr Watts was asked to provide an overview of the Member complaint process. He explained that this process involved numerous stages of review, assessment of the impact of Member conduct and the involvement of an independent person to support the Monitoring Officer consideration of complaints. Mr Watts highlighted that a significant number of previous complaints received during lockdown related to alleged Council failures rather than individual Member conduct.

- 2) Responding to questions, Mr Watts confirmed that he was committed to investigating and dealing complaints as quickly as possible within the resources available. He highlighted that many complaints were now more complex and these took more time to investigate. He noted that complainants were often dissatisfied with the outcome and it was important for the Committee to keep the complainant perspective in mind. Further information from that angle could be provided in future. In answering questions relating to specific timeframes or completion deadlines, Mr Watts advised that any mandatory response period would have resource implications but more importantly, the management of complaints within the Code had to involve an element of flexibility and reasonableness to ensure they could all be handled appropriately and effectively.
- 3) Mr Godfrey then introduced the substantive report, providing an overview of the issues and background. The item asked for consideration of the Kent Code of Conduct for Members recommended by the Kent Secretaries Group in response to the publication of the LGA Model Code of Conduct. He explained that practice varied with some councils effectively adopting the recommended code wholesale while others, including KCC had opted to use the recommended Code as a driver to undertake their own review. Mr Godfrey clarified that the Localism Act 2011 underpinned the current regime and therefore the legal framework for Member complaints could potentially be considered as slightly dated.
- 4) In outlining the changes within the recommended code, Mr Godfrey advised that some were tidying changes or minor tweaks while others involved making more substantive updates.
- 5) The Committee discussed and considered the suggested changes to the Code as set out within the LGA Model Code of Conduct. Comments were made on various elements and questions of clarification were asked. Mr Watts and Mr Godfrey advised the Committee at each stage. Key points on the relevant sections (see report in main agenda pack for details – edits marked A through to I) were as follows:
  - Change A - rejected as unnecessary.
  - Change B - Committee sought further clarification on the social media. Agreed to delegate management of any required changes.
  - Change C – Members discussed the challenge of agreeing a single definition of bullying. It was noted that a clear definition was helpful for the Monitoring Officer in the management and assessment of complaints. Agreed subject to updated drafting by the Monitoring Officer on the bullying definition.
  - Change D – Agreed following clarification on the change simply making it clear that releasing ‘exempt’ information is a breach of the Code.
  - Change E – Rejected as required further review outside of the this item.
  - Change F – Required further review. Not agreed pending further information.
  - Change G – Agreed subject to removal of references to website content.
  - Change H – Agreed
  - Change I – Agreed



RESOLVED that, with the caveats noted above, the approved changes be recommended to County Council for approval.

**8. Monitoring Officer Update**

*(Item 9)*

- 1) Mr Watts provided a brief update on potential areas of consideration of the Standards Committee. He suggested that paper be brought to a future meeting reviewing the Terms of Reference of the Committee and that this could support the development of a substantive work programme.

RESOLVED that the report be noted.

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From: Ben Watts, General Counsel  
To: Standards Committee, 20 March 2024  
Subject: Proposed Revisions to the Kent Code of Member Conduct  
Classification: **Unrestricted**

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**Summary:**

The purpose of this report is to ask Members to consider amendments to the Kent Code of Conduct for Members. The proposed amendments build 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.

**Recommendation:**

The Standards Committee is asked to:

- a. Discuss the proposed changes to the Kent Code of Member Conduct; and
- b. Recommend to County Council that the Constitution be amended with the changes agreed by this Committee.

**1. Introduction**

- a) In January 2019 the Committee on Standards in Public Life's (CSPL) published its review into 'Local Government Ethical Standards'<sup>1</sup>. Most of the recommendations in the CSPL report were for central government. The government response was discussed by this Committee on 9 May 2022<sup>2</sup>.
- b) However, the first recommendation in the CSPL report was for the Local Government Association (LGA) to update its model code of conduct. In mid-2020, the LGA conducted a consultation which led to the publication of this revised version.
- c) This legislation has remained largely the same since 2011. The LGA Model Code is not mandatory, and the flexibilities of the Localism Act 2011 remain. It is for the Council, with advice from the Standards Committee, to determine what changes to make.
- d) It needs to be kept in mind that the current Code is intended to be a Kent Code and not a Kent County Council Code. The majority of Borough/District Councils in Kent have adopted the same code. This helps with consistency when there are Members who are also Borough/District representatives and makes it clearer to the public to what standards their elected representatives are being held. However, each authority remains responsible for agreeing its own code and in practice, differences are possible.

## 2. Revising the Kent Code in Response to The Model Code

- a) The Standards Committee has discussed the CSPL report and the LGA Model Code previously. At its meeting of 22 February 2021<sup>3</sup>, the Committee considered the differences between the LGA Model Code and the current Kent Code and expressed views as to where changes could be made, and where they were not required.
- b) These views fed into the discussions of a Kent Secretaries working group that was set up to discuss and produce an amended version of the Kent Code for discussion by a formal meeting of the Kent Secretaries.
- c) This draft was presented to a meeting of the Kent Secretaries on 13 September 2021. Further changes were made at this meeting and the text of this draft as agreed by the Kent Secretaries was presented to this Committee on 9 May 2022.
- d) The Committee discussed the proposed changes and asked for a further revision to be presented to the Committee taking into account the comments made at the meeting. A revised set of suggested amendments to the Kent Code are now set out in the Appendix. The comments below refer to the section in the Appendix marked by the same letter as the comment:
  - A. Neither the preamble nor the Seven Principles of Public Life are part of the formal Code. The original suggestion by the Kent Secretaries was to explicitly set out the principle that not having received training on the Code could not be used as mitigation in the case of a complaint. It was felt this was more suitable as part of the preamble and has been placed there now.
  - B. The original suggestion by the Kent Secretaries was to include a requirement to cooperate with an investigation and any outcome. It was felt that while cooperation was the expectation it could lead to an infinite series of complaints arising from an initial one where a Member did not cooperate. To make clear that the Standards Committee believed it was the expectation, it has been adapted and moved to the preamble.
  - C. The original suggestion read as follows – “This Code applies to all forms of communication and interaction including social media.” A modifier has been added to the suggested wording – “...which could result in a relevant breach of the Code.” It was felt that the original phrasing was potentially too broad and so include communications made by Members outside their role as Members.
  - D. The current Code states that a Member must not “bully any person.” Harassment is not explicitly mentioned, although would be covered by relevant legislation. The suggested amendment proposed by the Kent Secretaries covered both bullying and harassment and made reference to the legislation covering harassment and explicit

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<sup>3</sup> <https://democracy.kent.gov.uk/ieListDocuments.aspx?CId=141&MId=8698&Ver=4>

reference to the ACAS definition of bullying. In response to Member comments on the latter, the amended wording in relation to bullying is a close adaptation of the words used in the LGA Model Code.

- E. The original recommendation from the Kent Secretaries was that the requirement to not disclose Part II papers from committee agendas should be explicitly mentioned. It was felt that having it as a separate clause meant that the public interest justification did not cover these. Part II papers have now been included as part of the preceding section to avoid this.
- F. The Kent Code includes the definitions of the Seven Principles of Public Life as they were when the Code was first adopted. The CSPL have amended the definitions and the Committee agreed that they should be updated. To ensure the most current definitions are used in the future, the reference to the CSPL website has been replaced with a standing delegation to the Monitoring Officer to update the definitions as needed.
- G. As agreed at the previous meeting, the definitions of the Seven Principles of Public Life have been updated with the one given on the CSPL website at the time of drafting.
- H. As agreed at the previous meeting, this historical footnote has been deleted.

e) In addition, the Kent Secretaries recommended adding the words “or body” after “other person” in what is currently 21.41(a) in the Appendix. This was rejected by the Committee and so is not shown in the revised draft.

### **3. Next Steps**

- a) The Committee are asked to consider the changes to the Kent Code proposed, in particular whether to endorse, reject, or modify the changes set out in the Appendix.
- b) Proposed changes to the Kent Code will be submitted to full Council for adoption following the agreement of this Committee to do so.

### **4. Recommendation:**

The Standards Committee is asked to:

- a. Discuss the proposed changes to the Kent Code of Member Conduct; and
- b. Recommend to County Council that the Constitution be amended with the changes agreed by this Committee.

### **5. Appendices**

## **6. Background Documents**

The LGA Model Code of Conduct for Members.

<https://www.local.gov.uk/publications/local-government-association-model-councillor-code-conduct-2020>

The Kent Code for Members. See Constitution sections 21.32 to 21.92

[https://www.kent.gov.uk/\\_data/assets/pdf\\_file/0010/3142/Constitution.pdf](https://www.kent.gov.uk/_data/assets/pdf_file/0010/3142/Constitution.pdf)

## **7. Report Author and Relevant Director**

Ben Watts, General Counsel

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Tristan Godfrey, Senior Governance Manager

03000 411704

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## Appendix – Draft Kent Code of Member Conduct<sup>1</sup> showing amendments as recommended by the Kent Secretaries Group

### Preamble

21.32 The Code of Conduct that follows is adopted under Section 27(2) of the Localism Act 2011.

21.33 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.

21.34 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.

A

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

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B

21.3421.36 There is an expectation that you will cooperate with any investigation undertaken under this Code and support or adhere to the conditions of any determination made at the conclusion of one.

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21.3521.37 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.

21.3621.38 In accordance with Section 34 of the Localism Act 2011, where you have a Disclosable Pecuniary Interest it is a criminal offence if, without reasonable excuse, you:

- (a) Fail to notify the Authority's Monitoring Officer of the interest before the end of 28 days beginning with the day on which you became a member.
- (b) Fail to disclose the interest at Meetings where the interest is not entered in the Authority's register.
- (c) Fail to notify the Authority's Monitoring Officer of the interest before the end of 28 days beginning with the date of disclosure at a meeting, if the interest is not entered in the Authority's register and is not the subject of a pending notification.
- (d) Take part in discussion or votes, or further discussions or votes, at Meetings on matters in which you have the interest which are being considered at the meeting.

<sup>1</sup> Section references are as per the Constitution as they would be if the amendments were all accepted.

- (e) Fail to notify the Authority's Monitoring Officer of the interest before the end of 28 days beginning with the date when you become aware that you have such an interest in a matter to be dealt with, or being dealt with, by you acting alone in the course of discharging a function of the Authority.
- (f) Take any step in relation to a matter being dealt with by you acting alone in the course of discharging a function of the Authority, except a step for the purpose of enabling the matter to be dealt with otherwise than by you.
- (g) Knowingly or recklessly provide false or misleading information in any of the above disclosures or notifications.

[21.3721.39](#) 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*

#### *Interpretation*

[21.3821.40](#) In this Code the following definitions shall apply:

[21.3921.41](#) "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 you or they are directors, or
- (c) any person or body in whom you or such persons have a beneficial interest in a class of securities exceeding the nominal value of £25,000, or
- (d) any body of which you are in a position of general control or management and to which you are appointed or nominated by the Authority, or
- (e) any body in respect of which you are in a position of general control or management:
  - i. exercising functions of a public nature, or
  - ii. directed to charitable purposes, or
  - iii. one of whose principal purposes includes the influence of public opinion or policy (including any political party or trade union).



[21.4021.42](#) "Authority" means the Kent County Council.

[21.4121.43](#) "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.

[21.4221.44](#) "Code" means this Code of Conduct.

[21.4321.45](#) "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.

[21.4421.46](#) "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.

[21.4521.47](#) "Interests" means Disclosable Pecuniary Interests and Other Significant Interests.

21.4621.48 "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.

21.4721.49 "Member" means a person who is a member of the Authority and includes a Co-opted Member.

21.4821.50 "Other Significant Interest" means an interest (other than a Disclosable Pecuniary Interest or an interest in an Authority Function) in any business of the Authority which:

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

21.4921.51 "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.

21.5021.52 "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

21.53 You must comply with this Code whenever you act in your official capacity as a Member or Co-opted Member of the Authority.

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21.5421.54 This Code applies to all forms of communication and interaction including social media which could result in a relevant breach of the Code.

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## General Obligations

21.5221.55 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).

21.5321.56 You must not:

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(a) bully any person; carry out any act of harassment or bully any person. For the purposes of this paragraph the following shall be taken into account:

- i. harassment will have the applicable meaning set out in The Protection from Harassment Act 1997, Equality Act 2010, and other relevant legislation; and
- ii. bullying is understood to be characterised by offensive, intimidating, malicious or insulting behaviour, an abuse or misuse of power through mean that undermine, humiliate, denigrate, or injure the recipient. It may be a regular pattern of behaviour or a one-off incident and is not restricted to face-to-face interactions.

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(a)(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;

(b)(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;

(e)(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, including that deemed as exempt information within the meaning of Part VA Local Government Act 1972 or The Local Authorities (Executive Arrangements) (Meetings and Access to Information) (England) Regulations 2012, except where:

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- 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:

- a. reasonable and in the public interest, and
- b. made in good faith and in compliance with the reasonable requirements of the Authority,

~~(d)~~(e) prevent another person from gaining access to information to which that person is entitled by law,

~~(e)~~(f) conduct yourself in a manner which could reasonably be regarded as bringing your office or the Authority into disrepute,

~~(f)~~(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*

[21.5421.57](#) 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.

[21.5521.58](#) 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.

[21.5621.59](#) 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.

[21.5721.60](#) 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.

[21.5821.61](#) 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 ~~21.62-~~

Disclosable

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numbering  
Interests

6421.64-66, below); and unless you have been granted a dispensation or are acting under 21.6421.62:

- i. not participate in any discussion of, or vote taken on, the matter at the Meeting, and
- ii. withdraw from the Meeting room in accordance with the Authority's Procedure Rules whenever it becomes apparent that the business is being considered, and
- iii. not seek improperly to influence a decision about that business.

21.5921.62 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.

21.6021.63 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*

21.6121.64 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.

Members'  
Interests: Other

[21.6221.65](#) 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 [21.642](#) is no longer a Sensitive Interest, notify the Monitoring Officer asking that the information be included in the Register of Members' Interests.

[21.6321.66](#) The rules relating to disclosure of Interests in paragraphs [21.5921.62](#) and [21.630](#) 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*

[21.6421.67](#) 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.

[21.6521.68](#) 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 [21.58-6421.60-63](#) above will apply.

[21.6621.69](#) 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.

[21.6721.70](#) 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*

[21.6821.71](#) 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 [21.58-6421.60-63](#) above).

Members: Gifts  
and Hospitality

Dispensations

[21.69](#)[21.72](#) 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.

[21.70](#)[21.73](#) A dispensation must specify the period for which it has effect, and the period specified may not exceed four years.

[21.71](#)[21.74](#) ~~[21.58-61](#)[21.60-63](#)~~ does not apply in relation to anything done for the purpose of deciding whether to grant a dispensation under ~~[21.69-74](#)[21.71-73](#)~~.

### The Seven Principles of Public Life

Seven Principles  
of Public Life

[21.72](#)[21.75](#) In accordance with the Localism Act 2011, and in order to help maintain public confidence in this Authority, you are committed to behaving in a manner that is consistent with the following principles. However, it should be noted that these Principles do not create statutory obligations for Members and do not form part of the Code. It follows from this that the Authority cannot accept allegations that they have been breached. The definitions of the Principles are set out below. These will be reviewed and updated by the Monitoring Officer on a regular basis to ensure the most current definitions are in use.

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[21.73](#)[21.76](#) ~~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. Holders of public office should act solely in terms of the public interest.~~

[21.77](#) ~~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. Holders of public office must avoid placing themselves under any obligation to people~~

or organisations that might try inappropriately to influence them in their work. They should not act or take decisions in order to gain financial or other material benefits for themselves, their family, or their friends. They must declare and resolve any interests and relationships.

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21.7521.78 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. Holders of public office must act and take decisions impartially, fairly and on merit, using the best evidence and without discrimination or bias.

21.7621.79 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. Holders of public office are accountable to the public for their decisions and actions and must submit themselves to the scrutiny necessary to ensure this.

21.7721.80 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. Holders of public office should act and take decisions in an open and transparent manner. Information should not be withheld from the public unless there are clear and lawful reasons for so doing.

21.7821.81 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. Holders of public office should be truthful.

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

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21.79 Note on the above: 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:  
Definitions

### **Disclosable Pecuniary Interests (as prescribed by regulations)**

21.8021.82 The descriptions on Disclosable Pecuniary Interests are subject to the following definitions:



[21.84121.83](#) “the Act” means the Localism Act 2011.

[21.8221.84](#) “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.

[21.8321.85](#) “director” includes a member of the Committee of management of an industrial and provident society.

[21.8421.86](#) “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.

[21.8521.87](#) “M” means a member of the relevant authority.

[21.8621.88](#) “member” includes a co-opted member.

[21.8721.89](#) “relevant authority” means the authority of which M is a member.

[21.8821.90](#) “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.

[21.8921.91](#) “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).

[21.9021.92](#) “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.

[21.9421.93](#) Table: Additional Definitions.

<b>Interest</b>	<b>Description</b>
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:  1) that body (to M's knowledge) has a place of business or land in the area of the relevant authority, and  2) either  a. the total nominal value of the securities exceeds £25,000 or one hundredth of the total issued share capital of that body, or  b. 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.

From: Ben Watts, General Counsel

To: Standards Committee, 20 March 2024

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

Classification: **Unrestricted**

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## 1. Introduction

- a) On 9 May 2022, this Committee discussed the proposed revisions to the Kent Code of Member Conduct drafted by the Kent Secretaries. There was a useful discussion on this, and Officers were asked to consider further revisions.
- b) After the work on the Kent Code, a further working group of the Kent Secretaries began revising the documents which set out the arrangements for dealing with code of conduct complaints under the Localism Act 2011. This work has now been completed, and the updated arrangements are now available as drafts for discussion by authorities in Kent.
- c) The Standards Committee is responsible for maintaining oversight of the arrangements in place and for managing the arrangements once in place.

## 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.
- b) Collectively these documents are a guide for the public, this Committee, and everyone involved with a complaint at any level. As with the current Code, the arrangements have been in place for a long while and it was considered an appropriate time to review the arrangements in the context of the review of the Code itself. The current arrangements documents are not as clear as they could be in certain areas and the revision process aimed to make sure there was improved internal consistency to the arrangements.
- c) The current arrangements are set out on the KCC website in the section providing information on making a complaint about a County Councillor. This can be viewed here: <https://www.kent.gov.uk/about-the-council/complaints-and-compliments#tab-11,13>. The collected current arrangements documents can be directly accessed for comparison purposes here: [https://www.kent.gov.uk/\\_data/assets/pdf\\_file/0009/77157/Process-for-handling-Code-of-Conduct-Complaints.pdf](https://www.kent.gov.uk/_data/assets/pdf_file/0009/77157/Process-for-handling-Code-of-Conduct-Complaints.pdf)

- d) On 21 September 2021, the Local Government Association produced new guidance on handling Member Code of Conduct Complaints<sup>1</sup>. This was also used to test the current arrangements and make suggested revisions.
- e) The revised arrangements as agreed by the Kent Secretaries are set out in the appendices in the same order as listed in 2a above. These have been adapted in two ways. 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).

### **3. Recommendation:**

The Standards Committee is asked to:

- a. agree to the proposed revised arrangements for handling Member complaints; and
- b. delegate to the Monitoring Officer the authority to make minor changes to the arrangement documents to ensure they are practical and consistent.

### **4. Appendices**

- Appendix 1 - Arrangements for Dealing with Code of Conduct Complaints under The Localism Act 2011.
- Appendix 2 - Annex 1 – Procedure on Receipt of a Complaints.
- Appendix 3 - Annex 2 – Procedure for Investigating the Complaint.
- Appendix 4 - Annex 3 – Hearing Panel Procedure.

### **5. Background Documents**

None.

### **6. Report Author and Relevant Director**

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

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

### **1. Context**

- 1.1 These Arrangements are made under section 28 of the Localism Act 2011. They set out the process that 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. Interpretation**

- 2.1 'County Council' means 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 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' means a person or persons appointed by the County Council under section 28(7) of the Localism Act 2011:
- (a) whose views are to be sought and taken into account by the County Council before it makes its decision on an allegation that it has decided to investigate and whose views may be sought by the County Council at any other stage;
  - (b) who may be consulted by the Subject Member about the complaint.
- 2.7 'Investigating Officer' means the person appointed by the Monitoring Officer to undertake a formal investigation of a complaint alleging a breach of the Code of Conduct by a Subject Member. The Investigating Officer may be another senior officer of the 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 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) shall 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 either:

- (a) in writing and addressed to the Monitoring Officer using the Complaint Form included within Annex 1 to these Arrangements or,
- (b) via the Council's website using the on-line complaint form provided there.

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

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

4.3 The Monitoring Officer will normally acknowledge receipt of a complaint within 15 working days of receiving it. At the same time (and subject to section 4.2 above), the Monitoring Officer will send a copy of the complaint to the Subject Member in accordance with section 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:
- (a) fails to notify the Monitoring Officer of a Disclosable Pecuniary Interest before the end of 28 days beginning with the day they become, or are re-elected or re-appointed, as a Member or Co-opted Member of the authority;
  - (b) fails to notify the Monitoring Officer of a Disclosable Pecuniary Interest before the end of 28 days beginning with the day 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;
  - (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;
  - (e) takes part in discussions or votes at meetings that relate to the Disclosable Pecuniary Interest, unless a dispensation has been granted;
  - (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 section 4(4) of Annex 1 to these Arrangements.

## **6. Anonymous complaints**

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

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

- 7.1 The Independent Person must be consulted and have their views taken into account before the 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 put the complaint through a number of preliminary tests, in accordance with 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 section 2 of Annex 1 may either be extended by the Monitoring Officer or the Monitoring Officer may act alone in taking the decision or action.

## **9. Informal resolution**

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

## **10. Investigation**

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

## **11. Hearing**

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

## **12. Sanctions**

- 12.1 Where a Subject Member has been found by the Hearing Panel to have breached the Code of Conduct, the Hearing Panel may apply any one or more sanctions in accordance with 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 or Parish Council the Monitoring Officer may determine to end the complaints process.

## **15. Revision of these Arrangements**

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 Complaint**

**Annex 2 - Procedure for Investigating the Complaint**

**Annex 3 - Hearing Panel Procedure**

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## PROCEDURE ON RECEIPT OF A COMPLAINT

### 1. Notification of Complaint to Subject Member

- 1.1 Subject to any representations from the Complainant on confidentiality (see 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

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

#### 2.2 Legal jurisdiction criteria test:

- (a) Did the alleged conduct occur before the adoption of the Code of Conduct? If the answer to this is 'Yes' the test is failed.
- (b) Was the person complained of a member of the 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) Is the complaint about dissatisfaction with the County Council's decisions, policies, priorities, processes, and governance etc? If the answer to this is 'Yes' the test is failed and the matter should be raised by the complainant directly with the Council via its general complaints process.

#### 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:

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

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

### **3. Asking for Additional Information**

3.1 The Monitoring Officer may ask the Complainant and the Subject Member for additional information before deciding how to deal with the complaint.

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

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- 4.1 The Monitoring Officer may at any stage seek to resolve the complaint informally in accordance with 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 The Monitoring Officer 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 section 12 of Annex 3 to these Arrangements); or
  - (b) The Subject Member's behaviour is part of a continuing pattern of less serious misconduct that is unreasonably disrupting the business of the 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 the Monitoring Officer may pass the complaint to the police. Where a complainant has been advised to refer a matter to the police or the Monitoring Officer has referred the matter to the police the complaints process under these Arrangements will be suspended, pending a decision/action by the police or other prosecuting or regulatory authority. Where the police or other prosecuting or regulatory authority decide to take no action on the complaint, the Monitoring Officer will lift the suspension and will apply the local assessment criteria test in section 2.4 above.
- 4.5 The Monitoring Officer may decide to take no action or to defer further action on the complaint whilst one or more of the following apply:
- (a) On-going criminal proceedings or police investigation into the Subject Member's conduct.
  - (b) Investigation cannot be proceeded with, without investigating similar alleged conduct or needing to come to conclusions of fact about events which are also the subject of some other investigation or court proceedings.
  - (c) The investigation might prejudice another investigation or court proceedings.
  - (d) Genuine long term (3 months or more) unavailability of a key party.

- (e) Serious illness of a key party.
- 4.6 Normally within 90 working days of receipt of the complaint, the Monitoring Officer will notify the Complainant, Subject Member of their decision and reasons for applying one of the following processes in the format of the Decision Notice template (appended to this Annex 1):
- (a) Not to refer the complaint for investigation.
  - (b) Refer the complaint for investigation.
  - (c) Apply the informal resolution process either before or after an investigation.
  - (d) Refer the complaint to the relevant political group leader for action.
- 4.7 There is no right of appeal against the Monitoring Officer's decision.

## **5. Confidentiality**

- 5.1 If the Complainant has asked for their identity to be withheld, this request will be considered by the Monitoring Officer when they initially assess the complaint (see section 2 above). The Monitoring Officer may consult the Independent Person.
- 5.2 As a matter of fairness and natural justice, the Subject Member will usually be told who the Complainant is and will also receive details of the complaint. However, in exceptional circumstances, it may be appropriate to keep the Complainant's identity confidential or not disclose details of the complaint to the Subject Member during the early stages of an investigation. The Monitoring Officer may withhold the Complainant's identity and/or details of the complaint if they are satisfied that there are reasonable grounds for believing that the Complainant or any other person (e.g., a witness):
- (a) Is either vulnerable or at risk of threat, harm, or reprisal.
  - (b) May suffer intimidation or be victimised or harassed.
  - (c) Works closely with the Subject Member and are afraid of the consequences, e.g., fear of losing their job.
  - (d) Suffers from a serious health condition and there are medical risks associated with their identity being disclosed (medical evidence will need to be provided to substantiate this).
  - (e) May receive less favourable treatment because of the seniority of the person they are complaining about in terms of any existing 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.

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

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



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- 6.5 Where the Subject Member will not participate in the informal resolution process or if, having agreed to one or more actions under the informal resolution process, the Subject Member refuses or fails to carry out any agreed action, the Monitoring Officer may report the matter to the Standards Committee.

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## Complaint Form

### Your Details

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

<b>Title:</b>	
<b>First name:</b>	
<b>Last name:</b>	
<b>Address:</b>	
<b>Daytime telephone:</b>	
<b>Evening telephone:</b>	
<b>Mobile telephone:</b>	
<b>Email address:</b>	

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

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

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

Title	First name	Last name	Council or authority name
-------	------------	-----------	---------------------------

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

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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 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.

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:

Signed:	
Date:	

Return Address:  
The Monitoring Officer, County Hall, County Road, Maidstone, Kent, ME15 8TG

## Complaints Form – Monitoring Information

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

Q1. Ethnic Group

**White:**

British

Irish

Any other white background

16-19

20-24

25-59

60-64

65 and above

**Black or Black British:**

Caribbean

African

Any other black background

Q5. Do you have a disability?

Yes

No

**Asian or Asian British:**

Indian

Pakistani

Bangladeshi

Any other Asian background

Q6. What is the nature of your disability?

Difficulty getting around

Mental health problems

Learning difficulty

Difficulty seeing

Hearing difficulty

Other

Q2. Sex

Male

Female

Q3. Partnership Status

Single

Married/Civil Partner

Separated

Divorced

Widow/Widower

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.

Q4. Age Group

Under 16

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

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

### **Complaint No:**

### **Complaint**

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

### **Complaint summary**

[Summarise complaint in numbered sections]

### **Consultation with Independent Person**

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

### **Decision**

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

### **Potential breaches of the Code of Conduct identified**

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

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

[detail relevant Code of Conduct sections]

### **Notification of decision**

This decision notice is sent to the:

- Complainant.
- Member against whom the complaint was made.

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- [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:**

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

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## PROCEDURE FOR INVESTIGATING THE COMPLAINT

### 1. Preliminaries

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

- 1.8 The Investigating Officer may conclude their investigation at any point, where they are satisfied that they have sufficient information to enable them to report to the Monitoring Officer.

## **2. Evidence of New Breaches**

- 2.1 The Investigating Officer may find evidence of conduct by 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.

## **3. Referring Cases Back to the Monitoring Officer**

- 3.1 During the course of an investigation, it may be necessary for the Monitoring Officer to consider whether the investigation should continue, for example, if:
- (a) Evidence suggests a case is less serious than may have seemed apparent originally and that a different decision might therefore have been made about whether to investigate it or not.
  - (b) It emerges during the investigation that the conduct under investigation was not conduct by the Subject Member in their role as a 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 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 and CONFIDENTIAL') to the Monitoring Officer for review.
- 5.2 Following review by the Monitoring Officer, the draft report will be sent in confidence to the Subject Member and the Complainant (not witnesses) for comment. The draft report will be clearly labelled 'DRAFT and CONFIDENTIAL' and will detail:
- (a) The relevant provisions of the law and the relevant sections of the Code of Conduct.
  - (b) A summary of the complaint.
  - (c) The Subject Member's response to the complaint.
  - (d) Relevant information, explanations, etc, which the Investigation Officer has obtained in the course of the investigation.
  - (e) A list of any documents relevant to the matter.
  - (f) A list of those persons/organisations who have been interviewed.
  - (g) A statement of the Investigating Officer's draft findings of fact and reasons.
  - (h) The Investigating Officer's conclusion as to whether the Subject Member has or has not failed to comply with the Authority's Code of Conduct.
  - (i) That the Investigating Officer will present a final report once they have considered any comments received on the draft.
- 5.3 Once the Investigating Officer has received any responses from the Subject Member and/or the Complainant, they will finalise the draft report and make their final conclusions and recommendations to the Monitoring Officer. The report will be clearly labelled 'FINAL and CONFIDENTIAL'.

## **6. Consideration of Investigating Officer's Final Report**

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

## **7. Confidentiality**

- 7.1 The procedures detailed in this Annex are all treated as confidential to those involved in the process. Some details (which would include names and addresses) may be personal data, subject to data protection laws, some content of statements or reports may be otherwise private or confidential or, may be potentially defamatory if published.
- 7.2 Whilst non-members are not covered by the Code of Conduct (e.g., members of the public, witnesses and non-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.

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## Hearing Panel Procedure

### 1. Pre-Hearing Procedure

- 1.1 In order to allow the hearing to proceed fairly and efficiently, the Monitoring Officer may in appropriate cases use a pre-hearing procedure to identify:
- (a) Which facts in the investigation report are agreed and which are in dispute.
  - (b) Whether there is fresh evidence not mentioned in the investigation report which will be put before the hearing.
  - (c) Whether there is documentary evidence which a party intends to put before the hearing.
  - (d) Whether the parties intend to attend, whether the parties intend to be represented in accordance with section 3 and, if so, by whom, the number and identity of witnesses to be called.
  - (e) Whether the Subject Member requests the whole or any part of the hearing to be held in private.
  - (f) Whether the Subject Member requests the whole or any part of the investigation report or other relevant documents to be withheld from the public.
- 1.2 The Monitoring Officer will notify the parties of the date, time, and place for the hearing.

### 2. Rules of Procedure

- 2.1 The Hearing Panel consists of three voting elected Members drawn from the [Standards Committee], one of whom shall be elected as 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 conduct constitutes a failure to comply with the Code of Conduct and as to any sanction to be taken following a finding of failure to comply with the Code of Conduct. The Independent Person should normally be present throughout the hearing (but not during the deliberations of the Hearing Panel in private) but in the event that this is not possible, may instead submit their views on the complaint to the Hearing Panel in writing.
- 2.4 The legal requirements for publishing agendas, minutes, and calling meetings, will apply to the Hearing Panel. The presumption is that the hearing will be held in public no earlier than 14 working days after the Monitoring Officer has copied

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the Investigating Officer's final report to the complainant and the Subject Member. Schedule 12A Local Government Act 1972 (as amended) may be applied to exclude the public and press from meetings of the Hearing Panel.

- 2.5 Once a hearing has started, the County 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 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 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.<sup>1</sup>

### **3. Right to be Accompanied by a Representative**

- 3.1 The Subject Member may choose to be represented by counsel, a solicitor, or by any other person they wish. The panel does, however, have the right to require a representative to leave if that representative disrupts the hearing. However, an appropriate warning will be given before requiring a representative to leave the hearing.

### **4. Order of Business**

- 4.1 Subject to section 4.2 below, the order of business will be as follows:-
  - (a) Elect a Chair.
  - (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 section 2.7 above).
  - (e) Introduction by the Chair, 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.

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



- (g) To determine whether the public/press are to be excluded from any part of the meeting and/or whether any documents (or parts thereof) should be withheld from the public/press.

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

## **5. Presentation of the Complaint**

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

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

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

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

## **6. Presentation of the Subject Member's Case**

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

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

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

## **7. Summing Up**

7.1 The Investigating Officer sums up the complaint.

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

## **8. Views/Submissions of the Independent Person**

8.1 The 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 to be in Private**

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- 9.1 The Hearing Panel will adjourn the hearing and deliberate in private (assisted on matters of law by a legal advisor) to consider whether or not, on the facts found, the Subject Member has failed to comply with the Code of Conduct.
- 9.2 The Hearing Panel may at any time come out of private session and reconvene the hearing in public, in order to seek additional evidence from the Investigating Officer, the Subject Member, or the witnesses. If further information to assist the Panel cannot be presented, then the Panel may adjourn the hearing and issue directions as to the additional evidence required and by whom.

## **10. Announcing Decision on Facts Found**

- 10.1 The Hearing Panel will reconvene the hearing in public (if the public have not been excluded from the proceedings) and the 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 considers that there has been a breach of the Code of Conduct, the 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:
- (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?
  - (b) Did the Subject Member receive advice from officers before the incident and was that advice acted on in good faith?
  - (c) Has there been a breach of trust?
  - (d) Has there been financial impropriety, e.g., improper expense claims or procedural irregularities?
  - (e) What was the result/impact of failing to follow the County Council's Code of Conduct?
  - (f) How serious was the incident?
  - (g) Does the Subject Member accept that they were at fault?
  - (h) Did the Subject Member apologise to the relevant person(s)?
  - (i) Has the Subject Member previously been reprimanded or warned for similar misconduct?

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- (j) Has the Subject Member previously breached 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.

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

## 11. Final Decision

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- 11.1 Where the complaint has a number of elements, the Hearing Panel may reach a finding, apply a sanction and/or make a recommendation on each element separately.
- 11.2 The Hearing Panel will make its decision on the balance of probabilities, based on the evidence before it during the hearing.
- 11.3 Having taken into account the Independent Person, the Subject Member and the Monitoring Officer's representations on the application of sanctions, the Hearing Panel will reconvene the hearing in public and the Chair will announce:
- (a) The Panel's decision as to whether or not the Subject Member has failed to comply with the Code of Conduct, and the principal reasons for the decision.
  - (b) The sanctions (if any) to be applied.
  - (c) The recommendations (if any) to be made to the County Council or Monitoring Officer.
  - (d) That there is no right of appeal against the Panel's decision and/or recommendations.

**12. Range of Possible Sanctions or Other Actions**

- 12.1 Where the Hearing Panel determines that the Subject Member has failed to comply with the Code of Conduct, any one or more of the following sanctions may be applied/recommended:
- (a) Report its findings in respect of the Subject Member's conduct to the Council.
  - (b) Issue a formal censure (i.e., the issue of an unfavourable opinion or judgement or reprimand).
  - (c) Recommend to the leader of the authority that the Subject Member be removed from positions of responsibility.
  - (d) Instruct the Monitoring Officer to arrange training for the Subject Member.
  - (e) Recommend to Council that the Subject Member be removed from all outside appointments to which they have been appointed or nominated by the authority.
  - (f) Recommend to Council that it withdraws facilities provided to the Subject Member by the authority for a specified period, such as a computer, website and/or email and internet access.
  - (g) Recommend to Council that it excludes the Subject Member from the authority's offices or other premises for a specified period, with the exception of meeting rooms as necessary for attending Council,

committee and sub-committee meetings, and/or restricts contact with officers to named officers only.

- (h) If relevant recommend to Council that the Subject Member be removed from their role as leader of the authority.
- (i) If relevant recommend to the secretary or appropriate official of a political group that the Member be removed as group leader or other position of responsibility.
- (j) Recommend that the Subject Member make an apology in respect of the conduct or take some other action to resolve the matter.

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

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

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

### **13. Publicising the Findings**

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

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

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

- (a) Say that the 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 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 made by the panel.

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

### Complaint summary

[Summarise complaint in numbered 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 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 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]

The Hearing Panel also made the following recommendation(s)

[Detail recommendations]

### Sanctions applied

The breach of the Kent County Council 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:

- Member [name of Member]
- Complainant
- Monitoring Officer
- Borough/City/District Council's Monitoring Officer *[applicable only where the Member is serving at both District 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:**

Chair of the Hearing Panel  
Kent County Council

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