

TONBRIDGE & MALLING BOROUGH COUNCIL



EXECUTIVE SERVICES

Chief Executive

Julie Beilby BSc (Hons) MBA

Gibson Building
Gibson Drive
Kings Hill, West Malling
Kent ME19 4LZ
West Malling (01732) 844522

To: MEMBERS OF THE COUNCIL

Dear Sir/Madam

I hereby summon you to attend a meeting of the Tonbridge and Malling Borough Council which will be held in the Civic Suite, Gibson Building, Kings Hill, West Malling on Tuesday, 3rd November, 2015 at 7.30 pm, when the following business is proposed to be transacted:-.

PART 1 - PUBLIC

- | | | |
|----|---|---------|
| 1. | Apologies for absence | 3 - 4 |
| 2. | Declarations of interest | 5 - 6 |
| | To declare any interests in respect of recommended items | |
| 3. | Minutes | 7 - 16 |
| | To confirm as a correct record the Minutes of the ordinary meeting of Council held on 14 July 2015 and of the two special meetings held on 14 July 2015 | |
| 4. | Mayor's Announcements | 17 - 18 |
| 5. | Questions from the public pursuant to Council Procedure Rule No 5.6 | 19 - 20 |
| 6. | Questions from Members pursuant to Council Procedure Rule No 5.5 | 21 - 22 |
| 7. | Leader's Announcements | 23 - 24 |

8. Reports, Minutes and Recommendations 25 - 26

To receive and consider reports, minutes and recommendations from the meetings of the Cabinet and Committees set out in the Minute Book and officers' reports on any matters arising from them, and to receive questions and answers on any of those reports. Matters for recommendation to the Council are indicated below at items 9 to 10.

9. Gambling Act 2005 - Revised Statement of Policy 27 - 60

Item LA 15/89 referred from Licensing and Appeals Committee minutes of 22 September 2015

10. Treasury Management Mid-Year Review 2015/16 61 - 80

Item CB 15/52 referred from Cabinet minutes of 7 October 2015

11. Recommendations to Council Following Hearing of Joint Standards Committee on 12 October 2015 81 - 188

12. Code of Conduct Complaints - Composition of Hearing Panel 189 - 222

13. Changes to the Constitution 223 - 232

14. Sealing of Documents 233 - 234

To authorise the Common Seal of the Council to be affixed to any Contract, Minute, Notice or other document requiring the same.

JULIE BEILBY
Chief Executive
Monday, 26 October 2015

Apologies for absence

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Agenda Item 2

Declarations of interest

To declare any interests in respect of recommended items.

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TONBRIDGE AND MALLING BOROUGH COUNCIL

COUNCIL MEETING

Tuesday, 14th July, 2015

At the meeting of the Tonbridge and Malling Borough Council held at Civic Suite, Gibson Building, Kings Hill, West Malling on Tuesday, 14th July, 2015

Present: His Worship the Mayor (Councillor O C Baldock), the Deputy Mayor (Councillor M R Rhodes) Cllr Mrs J A Anderson, Cllr Ms J A Atkinson, Cllr M A C Balfour, Cllr Mrs S M Barker, Cllr M C Base, Cllr Mrs P A Bates, Cllr Mrs S Bell, Cllr R P Betts, Cllr P F Bolt, Cllr J L Botten, Cllr V M C Branson, Cllr Mrs B A Brown, Cllr M A Coffin, Cllr D J Cure, Cllr R W Dalton, Cllr D A S Davis, Cllr Mrs T Dean, Cllr B T M Elks, Cllr Mrs S M Hall, Cllr S M Hammond, Cllr Mrs M F Heslop, Cllr N J Heslop, Cllr S R J Jessel, Cllr D Keeley, Cllr S M King, Cllr R D Lancaster, Cllr D Lettington, Cllr Mrs S L Luck, Cllr B J Luker, Cllr D Markham, Cllr P J Montague, Cllr Mrs A S Oakley, Cllr L J O'Toole, Cllr M Parry-Waller, Cllr S C Perry, Cllr H S Rogers, Cllr R V Roud, Cllr Miss J L Sergison, Cllr T B Shaw, Cllr Miss S O Shrubsole, Cllr C P Smith, Cllr Ms S V Spence, Cllr A K Sullivan, Cllr M Taylor and Cllr F G Tombolis

Apologies for absence were received from Councillors T Bishop, T I B Cannon, M O Davis, T Edmondston-Low, Mrs F A Kemp, B W Walker and T C Walker

PART 1 - PUBLIC

C 15/48 DECLARATIONS OF INTEREST

There were no declarations of interest made in accordance with the Code of Conduct.

C 15/49 MINUTES

RESOLVED: That the Minutes of the proceedings of the meeting of the Council held on 19 May 2015 be approved as a correct record and signed by the Mayor.

C 15/50 MAYOR'S ANNOUNCEMENTS

The Mayor reported that he had attended many events since the Annual Meeting and highlighted a number of the most memorable including the Nepalese Tonbridge Community Collection for the earthquake in Nepal which had raised over £4,500. He mentioned a private viewing of the Magna Carta Rediscovered Exhibition in Faversham, the National Care

Home open day at Pilgrims View, Snodland and the Armed Forces Day flag raising at Tonbridge Castle. The Mayor also described meeting some of “the Few” at the Battle of Britain Memorial Day at Capel-le-Ferne.

The Mayor thanked the Deputy Mayor for attending several events and those Members who had been present at the Civic Service. He issued a reminder for his Garden Party at Hadlow College on 22 July and requested volunteers for the Tonbridge and Malling Council team for the Dragon Boat Race on 13 September. Notice of future events included the Tonbridge Christmas Festival on 22 November and the hosting of a performance at the Oast Theatre on 23 February 2016. Details of other events would be given nearer the dates.

C 15/51 QUESTIONS FROM THE PUBLIC PURSUANT TO COUNCIL PROCEDURE RULE NO 5.6

No questions were received from members of the public pursuant to Council Procedure Rule No 5.6.

C 15/52 QUESTIONS FROM MEMBERS PURSUANT TO COUNCIL PROCEDURE RULE NO 5.5

No questions were received from Members pursuant to Council Procedure Rule No 5.5.

C 15/53 LEADER'S ANNOUNCEMENTS

The Leader welcomed new Members to their first Council meeting since the Annual Meeting. He referred to the full cycle of the new advisory boards and committees that had taken place and thanked both Members and staff for embracing the changes introduced since May.

At the meeting in April the Leader had reported on the Council's response to the loss of Aylesford Newsprint. He indicated that whilst service delivery to residents had not been affected, the immediate financial impact of the closure was significant. In respect of paper recycling income, new arrangements had been put in place with the Council's main waste services contractor Veolia and a report would be submitted to the new Housing and Environment Services Advisory Board.

In respect of future impact on business rate income, the Leader said Members would be aware that he had recently written to Marcus Jones, the local government minister, seeking his support for the Treasury Review to take account of unpredictable economic factors, such as the closure of Aylesford Newsprint. Due to the business size and rateable value, closure would have an extremely detrimental impact on a small local authority which was supportive of local business and invested what it could in helping grow the local economy.

The Leader reported, however, that there had been some very good news for two local businesses in winning awards at the Kent Excellence in Business Awards. Winterdale Cheesemakers in Wrotham had been successful in the Business Commitment to the Environment and congratulations were due to Robin and Carla Betts for their achievements with the business in nine years. The Kent County Football Association based in Ditton had won the Business Commitment to the Community category.

The Council was advised that 13 July marked the start of a county-wide Love Kent Hate Litter campaign that would run to the end of August. This year's campaign would focus on road-side littering with the strap line "Have a great summer - not a rubbish one – Take Your Litter Home". In Tonbridge and Malling, signs bearing the strapline were being placed in prominent places around the Borough to encourage people to dispose of their litter responsibly. The Leader also indicated that the impact of litter was reflected in the £1.2 million cost of street cleansing, hence the need for the message to be pressed home.

The Leader referred to the administration's commitment to the realisation of junction 5 east facing slips, an infrastructure improvement that would do much to alleviate the air quality issues for Platt, Borough Green and Ightham and all communities along the A20. Two years ago, he was successful in lobbying the South East Local Enterprise Partnership (LEP) to include such a scheme within its own strategic plan. The South East England Councils had also included the project in its 'Mind the Gap' transport plan for the south east. The Leader was therefore pleased to confirm the undertaking given at the last meeting of the Planning and Transportation Advisory Board that, following representations made by Councillor Steve Perry, the Council would contribute an additional £1,000 to the £5,000 committed before the election towards a Kent County Council feasibility study.

The Leader commented on some good news for the health and wellbeing of residents: according to an Active People Survey, recently carried out on behalf of Sport England, the number of adults in the Borough participating in at least one 30-minute, moderate intensity sport per week was the highest in Kent. The survey not only ranked Tonbridge and Malling as top in Kent but also placed the Borough 17th nationally.

Members were then made aware of ongoing discussions about the future of the South East LEP which presently covered the whole of Essex, Medway, Kent and East Sussex but with a federated structure whereby local authority leaders, businesses and education providers met as the Kent and Medway Enterprise Partnership. Experience to date indicated that the sheer geographical coverage of the SE LEP was unwieldy, lacked focus and decisions had been frustrating. The Leader stated that Ministers had hinted that they would consider the redrawing

of LEP boundaries and consequently the Kent and Medway Enterprise Partnership had formally proposed a new LEP for Kent and Medway. He indicated that, ironically, those were the arrangements originally promoted by all Kent districts and hoped to report the outcome at the next meeting in November.

Finally, the Leader invited Councillor Martin Coffin to make a presentation to the Council of the RoSPA Gold Medal Award in recognition of its approach to occupational health and safety. The award had been received as part of the annual scheme run by the Royal Society for the Prevention of Accidents at a ceremony at ExCel in London. In presenting the award to the Mayor, Councillor Coffin reported that this year a prestigious Gold Medal had been awarded to the Council for maintaining Gold Award standards for five consecutive years.

C 15/54 RISK MANAGEMENT STRATEGY

Item CB 15/40 referred from Cabinet minutes of 24 June 2015

RESOLVED: That the recommendations at Minute CB 15/40 be approved.

C 15/55 LOCAL CODE OF CORPORATE GOVERNANCE

Item CB 15/41 referred from Cabinet minutes of 24 June 2015

RESOLVED: That the recommendations at Minute CB 15/41 be approved.

C 15/56 TREASURY MANAGEMENT UPDATE AND ANNUAL REPORT FOR 2014/15

Item CB 15/42 referred from Cabinet minutes of 24 June 2015

RESOLVED: That the recommendations at Minute CB 15/42 be approved.

C 15/57 HUMAN RESOURCES STRATEGY UPDATE

Item GP 15/12 referred from General Purposes Committee minutes of 29 June 2015

RESOLVED: That the recommendations at Minute GP 15/12 be approved.

C 15/58 CHANGES TO CONSTITUTION - DISMISSAL OF STATUTORY OFFICERS

The report of the Director of Central Services and Monitoring Officer gave details of proposed changes to the Constitution relating to the dismissal of statutory officers as required by the Local Authorities (Standing Orders) (England) (Amendment) Regulations 2015.

Reference was made to the provisions regarding appointment of a panel to advise on matters relating to the dismissal of a statutory officer, including the involvement of independent persons. It was recommended that a standing panel should not be appointed but only established if and when the need arose.

RESOLVED: That the amendments to the Officer Employment Procedure Rules, as set out at Appendix 3 to the report, be approved to give effect to the requirements of the Local Authorities (Standing Orders) (England) (Amendment) Regulations 2015.

C 15/59 APPOINTMENTS TO OUTSIDE BODIES

Consideration was given to the report of the Director of Central Services regarding the nomination of a person to serve as a Trustee of the Hospital of the Holy Trinity, Aylesford and the ratification of the appointment of Councillor D Davis to the Lower Medway Internal Drainage Board in place of former councillor, Mr P Homewood. Thanks were recorded to Mr Homewood for his past service.

RESOLVED: That

- (1) Councillor M Base be nominated as a Trustee of the Hospital of the Holy Trinity, Aylesford for a four year term of office; and
- (2) the appointment of Councillor D Davis as a representative on the Lower Medway Internal Drainage Board be confirmed.

C 15/60 SEALING OF DOCUMENTS

RESOLVED: That authority be given for the Common Seal of the Council to be affixed to any instrument to give effect to a decision of the Council incorporated into these Minutes and proceedings.

The meeting ended at 7.59 pm

TONBRIDGE AND MALLING BOROUGH COUNCIL

COUNCIL MEETING

Tuesday, 14th July, 2015

At the Special Meeting of the Tonbridge and Malling Borough Council held at Civic Suite, Gibson Building, Kings Hill, West Malling on Tuesday, 14th July, 2015

Present: His Worship the Mayor (Councillor O C Baldock), the Deputy Mayor (Councillor M R Rhodes) Cllr Mrs J A Anderson, Cllr Ms J A Atkinson, Cllr M A C Balfour, Cllr Mrs S M Barker, Cllr M C Base, Cllr Mrs P A Bates, Cllr Mrs S Bell, Cllr R P Betts, Cllr P F Bolt, Cllr J L Botten, Cllr V M C Branson, Cllr Mrs B A Brown, Cllr M A Coffin, Cllr D J Cure, Cllr R W Dalton, Cllr D A S Davis, Cllr Mrs T Dean, Cllr B T M Elks, Cllr Mrs S M Hall, Cllr S M Hammond, Cllr Mrs M F Heslop, Cllr N J Heslop, Cllr S R J Jessel, Cllr D Keeley, Cllr S M King, Cllr R D Lancaster, Cllr D Lettington, Cllr Mrs S L Luck, Cllr B J Luker, Cllr D Markham, Cllr P J Montague, Cllr Mrs A S Oakley, Cllr L J O'Toole, Cllr M Parry-Waller, Cllr S C Perry, Cllr H S Rogers, Cllr R V Roud, Cllr Miss J L Sergison, Cllr T B Shaw, Cllr Miss S O Shrubsole, Cllr C P Smith, Cllr Ms S V Spence, Cllr A K Sullivan, Cllr M Taylor and Cllr F G Tombolis

Apologies for absence were received from Councillors T Bishop, T I B Cannon, M O Davis, T Edmondston-Low, Mrs F A Kemp, B W Walker and T C Walker

PART 1 - PUBLIC

C 15/61 ADMITTANCE OF HONORARY FREEMEN

Consideration was given to a Notice of Motion pursuant to Council Procedure Rule No 5.18 and submitted jointly by Councillors Mrs J Anderson, M Balfour, M Coffin, N Heslop, Mrs F Kemp, R Lancaster, Mrs A Oakley and A Sullivan that the title of Honorary Freeman be conferred upon Mrs Susan Murray and Mrs Elizabeth Simpson in accordance with Section 249 of the Local Government Act 1972.

It was proposed by Councillor N Heslop, seconded by Councillor Mrs A Oakley and

RESOLVED: That

- (1) in recognition of her eminent services to the Borough of Tonbridge and Malling, Mrs Susan Murray be admitted as an Honorary Freeman of the Borough pursuant to Section 249(5) of

the Local Government Act 1972;

- (2) in recognition of her eminent services to the Borough of Tonbridge and Malling, Mrs Elizabeth Simpson be admitted as an Honorary Freeman of the Borough pursuant to Section 249(5) of the Local Government Act 1972; and
- (3) in pursuance of Section 249(9) of the Local Government Act 1972, expenditure be authorised to enable an address to be presented to each of the Honorary Freemen of the Borough referred to in (1) and (2) above.

[In accordance with Council and Committee Procedure Rule 8.6, Councillor M Taylor requested that his vote against the motion be recorded.]

C 15/62 SEALING OF DOCUMENTS

RESOLVED: That authority be given for the Common Seal of the Council to be affixed to any instrument to give effect to a decision of the Council incorporated into these Minutes and proceedings.

The meeting ended at 8.04 pm
having commenced at 8 pm

TONBRIDGE AND MALLING BOROUGH COUNCIL

COUNCIL MEETING

Tuesday, 14th July, 2015

At the Special Meeting of the Tonbridge and Malling Borough Council held at Civic Suite, Gibson Building, Kings Hill, West Malling on Tuesday, 14th July, 2015

Present: His Worship the Mayor (Councillor O C Baldock), the Deputy Mayor (Councillor M R Rhodes) Cllr Mrs J A Anderson, Cllr Ms J A Atkinson, Cllr M A C Balfour, Cllr Mrs S M Barker, Cllr M C Base, Cllr Mrs P A Bates, Cllr Mrs S Bell, Cllr R P Betts, Cllr P F Bolt, Cllr J L Botten, Cllr V M C Branson, Cllr Mrs B A Brown, Cllr M A Coffin, Cllr D J Cure, Cllr R W Dalton, Cllr D A S Davis, Cllr Mrs T Dean, Cllr B T M Elks, Cllr Mrs S M Hall, Cllr S M Hammond, Cllr Mrs M F Heslop, Cllr N J Heslop, Cllr S R J Jessel, Cllr D Keeley, Cllr S M King, Cllr R D Lancaster, Cllr D Lettington, Cllr Mrs S L Luck, Cllr B J Luker, Cllr D Markham, Cllr P J Montague, Cllr Mrs A S Oakley, Cllr L J O'Toole, Cllr M Parry-Waller, Cllr S C Perry, Cllr H S Rogers, Cllr R V Roud, Cllr Miss J L Sergison, Cllr T B Shaw, Cllr Miss S O Shrubsole, Cllr C P Smith, Cllr Ms S V Spence, Cllr A K Sullivan, Cllr M Taylor and Cllr F G Tombolis

Apologies for absence were received from Councillors T Bishop, T I B Cannon, M O Davis, T Edmondston-Low, Mrs F A Kemp, B W Walker and T C Walker

PART 1 - PUBLIC

C 15/63 CONFERMENT OF THE TITLE OF HONORARY ALDERMAN

Consideration was given to a Notice of Motion pursuant to Council Procedure Rule No 5.18 and submitted jointly by Councillors Mrs J Anderson, M Balfour, M Coffin, N Heslop, Mrs F Kemp, R Lancaster, Mrs A Oakley and A Sullivan that the title of Honorary Alderman be conferred upon Mr Andrew Allison, Mr David Evans, Mr Peter Homewood, Miss Anne Moloney and Mrs Christine Woodger in accordance with Section 249 of the Local Government Act 1972.

It was proposed by Councillor N Heslop, seconded by Councillor Mrs A Oakley and

RESOLVED: That in accordance with Section 249 of the Local Government Act 1972, the title of Honorary Alderman be conferred upon the following former Councillors in recognition of their eminent services to the Borough Council:

Mr Andrew Allison, Mr David Evans, Mr Peter Homewood,
Miss Anne Moloney and Mrs Christine Woodger.

C 15/64 SEALING OF DOCUMENTS

RESOLVED: That authority be given for the Common Seal of the Council to be affixed to any instrument to give effect to a decision of the Council incorporated into these Minutes and proceedings.

The meeting ended at 8.07 pm
having commenced at 8.05 pm

Mayor's Announcements

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Agenda Item 5

Questions from the public pursuant to Council Procedure Rule No 5.6

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Agenda Item 6

Questions from Members pursuant to Council Procedure Rule No 5.5

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Leader's Announcements

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Agenda Item 8

<u>Meeting</u>	<u>Date</u>	<u>Page Nos. in Minute Book</u>	<u>Recommendations to Council</u>
Licensing and Appeals Panels (x4)	29 July	259 – 265	-
Licensing and Appeals Panels (x3)	26 August	266 – 274	-
Audit Committee	7 September	275 – 278	-
Overview and Scrutiny Committee	15 September	279 – 283	-
Licensing and Appeals Panels (x4)	16 September	284 – 291	-
Licensing and Appeals Committee	22 September	292 – 294	LA 15/89
General Purposes Committee	5 October	295 – 298	-
Cabinet	7 October	299 – 301	CB 15/52
Area 1 Planning Committee	2 July	AP 45 – 48	-
Area 2 Planning Committee	8 July	AP 49 – 53	-
Area 3 Planning Committee	16 July	AP 54 – 57	-
Area 1 Planning Committee	30 July	AP 58 – 62	-
Area 2 Planning Committee	19 August	AP 63 – 66	-
Area 1 Planning Committee	17 September	AP 67 – 70	-
Area 2 Planning Committee	30 September	AP 71 – 74	-
Area 3 Planning Committee	8 October	AP 75 – 78	-

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Item LA 15/89 referred from Licensing and Appeals Committee minutes of 22 September 2015

GAMBLING ACT 2005 - REVISED STATEMENT OF POLICY

The report of the Director of Central Services and Monitoring Officer reminded Members that Section 349 of the Gambling Act 2005 required that Licensing Authorities prepare and publish a statement of principles to be applied in exercising their functions under the Act over a three year period. Members noted that the Council's current Statement of Principles for the Gambling Act 2005 was due to expire on 14 January 2016 and the report set out details of the matters to be taken into account during the consultation period prior to the publication of a revised Statement of Policy. The Director of Central Services advised that it would not be possible to take the latest Gambling Commission guidance into account within the proposed timescale and he set out details of revisions to the existing policy which would allow its reinstatement with effect from January 2016.

RECOMMENDED: That, subject to no adverse comments being received during the consultation period and to minimal changes to ensure accuracy, the Council re-adopt the existing version of the policy for a period of 3 years with effect from 14 January 2016.

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TONBRIDGE & MALLING BOROUGH COUNCIL

LICENSING & APPEALS COMMITTEE

22 September 2015

Report of the Director of Central Services and Monitoring Officer

Part 1- Public

Matters for Recommendation to Council

1 GAMBLING ACT 2005 – REVISED STATEMENT OF POLICY

1.1 Executive Summary

1.1.1 Section 349 of the Gambling Act 2005 requires all Licensing Authorities to prepare and publish a statement of the principles that they propose to apply in exercising their functions under the Act during the three year period to which the policy applies.

1.1.2 The Council's current Statement of Principles for the Gambling Act 2005 took effect from 14 January 2013 and will run until 14 January 2016.

1.1.3 In preparing a statement, the Council will have regard to guidance issued by the Gambling Commission. The Commission has just completed consultation on the 5th edition of the guidance, and intend to publish their response in late September/early October 2015. Unfortunately, due to the proposed timing of publication, it will not be possible to prepare and consult on a revised version of our policy in order to ensure both that it reflects the amended guidance and is in force by January 2016.

1.1.4 Given the above, it is therefore intended to re-instate the existing version of the policy with effect from January 2016, subject only to minimal changes to ensure accuracy (change of contact details etc).

1.1.5 A draft copy of the draft policy is shown at **Annex 1**. On publication of the revised guidance from the Gambling Commission a further review of the statement will take place to determine whether any modifications are required. It is anticipated this further review will take place early in 2016.

1.2 Legal Implications

1.2.1 Under the Gambling Act 2005, the Licensing Authority Statement of Policy will last for a maximum of three years.

1.2.2 In preparing a statement or revision of the Statement of Policy, the Council is required to consult the Chief Officer of Police, together with representatives of

local gambling trade and others likely to be affected by the exercise of the Council's functions under the Act. It is proposed to carry this consultation exercise out for a 4 week period commencing 23 September to 23 October 2015. However, given that the policy will substantively remain the same we do not expect to receive any adverse comments.

- 1.2.3 The policy must be approved by Full Council on the recommendation of the Licensing and Appeals Committee. Once adopted, the Statement must be published & advertised in accordance with specific provisions set out in the Gambling Act 2005 (Licensing Authority Policy Statement) (England and Wales) Regulations 2006.

1.3 Financial and Value for Money Considerations

- 1.3.1 Fee levels for licences and permits are set by the Licensing Authority.

1.4 Risk Assessment

- 1.4.1 The statement of policy should provide a transparent and consistent basis for decision making. This in turn should reduce the risks of decisions being challenged in the Courts

1.5 Equality Impact Assessment

- 1.5.1 There is no perceived impact on end users.

1.6 Recommendations

- 1.6.1 Members are requested to RECOMMEND to Council that, subject to no adverse comments being received during the consultation period, the existing version of the policy be re-adopted for a period of 3 years with effect from January 2016, subject to minor changes.

Background papers:

contact: Anthony Garnett 6151

Gambling Act 2005

TMBC Statement of Policy

Gambling Commission Web site

Adrian Stanfield

Director of Central Services and Monitoring Officer



Tonbridge and Malling Borough Council

Gambling Act 2005

Draft Statement of Principles Gambling Policy

14 January 2013 to 14 January 2016

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1. Process steps to develop this policy

- | | |
|---|---|
| a) Draft consultation agreed at the Licensing and Appeals Committee | 22 nd September 2015 |
| b) Public Consultation | 23 rd t September 2015
until
23 rd October 2015 |
| c) Full Council adopt policy | 3 rd November 2015 |
| d) New Policy comes into force | 14 January 2016 |

2. The Licensing Objectives

In exercising most of their functions under the Gambling Act 2005, licensing authorities must have regard to the licensing objectives as set out in section 1 of the Act. The licensing objectives are:

- Preventing gambling from being a source of crime or disorder, being associated with crime or disorder or being used to support crime
- Ensuring that gambling is conducted in a fair and open way
- Protecting children and other vulnerable persons from being harmed or exploited by gambling

3. Principles to be applied - Section 153

- (1) In exercising its functions under this part a Licensing Authority shall aim to permit the use of premises for gambling
- a) in accordance with any relevant code of practice under section 24;
 - b) in accordance with any relevant guidance issued by the Commission under section 25;
 - c) reasonably consistent with the licensing objectives (subject to paragraphs (a) and (b));
 - d) in accordance with the statement published by the authority under section 349 (subject to paragraphs (a) to (c)).
- (2) In determining whether to grant a Premises Licence a Licensing Authority must not have regard to the expected demand for gambling premises that are the subject of the application.

(3) Any objection to an application for a Premises Licence or request for a review of an existing licence should be based on the licensing objectives of the Gambling Act 2005. It should be noted that, unlike the Licensing Act 2003, the Gambling Act 2005 does not include as a specific licensing objective for the prevention of public nuisance. There is however other relevant legislation which deals with public nuisance.

4. Introduction

Tonbridge and Malling Borough Council is situated in the County of Kent, which contains 12 District Councils and 1 Unitary Authority in total.

Tonbridge and Malling covers an area of 24,013 hectares. The main towns are Tonbridge, Aylesford, Ditton, Larkfield and Snodland.

The areas are shown in the map below.



Licensing authorities are required by the Gambling Act 2005 to publish a statement of the principles that they proposed to apply when exercising their functions. This statement must be published at least every three years. The statement can also be reviewed from “time to time” and the amended parts re-consulted upon. The statement must then be re-published at least every three years.

In determining its policy the licensing authority must have regard to the Gambling Commission Guidance and will give appropriate weight to the views of those it has consulted.

Tonbridge and Malling Borough Council consulted widely on this policy statement before finalising and publishing it.

The Gambling Act requires that the following parties be consulted by Licensing Authorities:

- The Chief Officer of Police for the authority's area
- One or more persons who appear to the authority represent the interests of persons carrying on gambling businesses in the authority's area
- One or more persons who appear to the authority to represent the interests of persons who are likely to be affected by the exercise of the authority's functions under the Gambling Act 2005

The list of persons consulted when preparing this Policy statement is deliberately wide, including Councillors, Parish Councils, Gambling premises, Responsible Authorities and Local Interest Groups.

The policy is published on Tonbridge and Malling Borough Councils website www.tmbc.gov.uk Copies have been placed in Council's offices and the public libraries within the area.

This policy statement will not override the right of any person to make an application, make representations about an application or apply for a review of a licence. Each application or representation will be considered on its own merits and according to the statutory requirements of the Gambling Act 2005.

5. Declaration

In producing this final licensing policy statement, this Licensing Authority declares that it has had regard to the licensing objectives of the Gambling Act 2005, the Guidance issued by the Gambling Commission, and any responses from those consulted on the policy statement.

6. Casinos

No Casinos resolution – Section 166 of the Gambling Act 2005 gives a Licensing Authority the ability to resolve not to issue casino premises licences. This licensing authority has **not** passed a 'no casino' resolution. Should this licensing authority decide in the future to pass such a resolution, it will update this policy statement with details of that resolution.

7. Functions

Function	Who deals with it
Be responsible for the licensing of premises where gambling activities are to take place by issuing <i>Premises Licences</i>	Licensing Authority
Issue <i>Provisional Statements</i>	Licensing Authority
Regulate <i>members' clubs</i> and <i>miners' welfare institutes</i> who wish to undertake certain gaming activities via issuing Club Gaming Permits and/or Club Machine Permits	Licensing Authority
Issue <i>Club Machine Permits to Commercial Clubs</i>	Licensing Authority
Grant permits for the use of certain lower stake gaming machines at <i>unlicensed Family Entertainment Centres</i>	Licensing Authority
Receive notifications from alcohol licensed premises (under the Licensing Act 2003) of the use of two or fewer gaming machines	Licensing Authority
Grant <i>Licensed Premises Gaming Machine Permits</i> for premises licensed to sell/supply alcohol for consumption on the licensed premises, under the Licensing Act 2003, where more than two machines are required	Licensing Authority
Register <i>small society lotteries</i> below prescribed thresholds	Licensing Authority
Issue <i>Prize Gaming Permits</i>	Licensing Authority
Receive and Endorse <i>Temporary Use Notices</i>	Licensing Authority
Receive <i>Occasional Use Notices</i>	Licensing Authority
Provide information to the Gambling Commission regarding details of licences issued (see section above on 'information exchange')	Licensing Authority
Maintain registers of the permits and licences that are issued under these functions	Licensing Authority

Gambling Commission Functions

Function	Who deals with it
Issue and renewal of Operating Licences	Gambling Commission
Review Operating Licences	Gambling Commission
Issue Personal Licences	Gambling Commission
Issue Codes of Practice	Gambling Commission
Issue Guidance to Licensing Authorities	Gambling Commission
Licence remote gambling through Operating Licences	Gambling Commission
Issue licences in relation to the manufacture, supply, installation, adaptation, maintenance or repair of gaming machines	Gambling Commission
Deal with appeals against Commission decisions	Gambling Appeals Tribunal

The Licensing Authority is not involved in licensing remote gambling. This will fall to the Gambling Commission via operating licences.

Concerns about manufacture, supply or repair of gaming machines will not be dealt with by the Licensing Authority but will be notified to the Gambling Commission.

8. Responsible Authorities

In exercising this licensing authority's powers under Section 157(h) of the Act to designate, in writing, a body which is competent to advise the authority about the protection of children from harm, the following principles have been applied:

the need for the body to be responsible for an area covering the whole of the licensing authority's area

the need for the body to be answerable to democratically elected persons, rather than any particular vested interest group etc

In accordance with the Gambling Commission's Guidance for local authorities this authority designates the following for this purpose:

Kent Safeguarding Children Board

The contact details of all the Responsible Bodies under the Gambling Act 2005 are listed at **Appendix 3**.

9. Interested parties

The licensing authority is required by regulations to state the principles it will apply in exercising its powers under the Gambling Act 2005 to determine whether a person is an interested party.

Interested parties can make representations about licence applications, or apply for a review of an existing licence.

These parties are defined in Section 158 of the Gambling Act 2005 as someone who, in the opinion of the licensing authority which issues the licence or to which the application is made, -

- a) lives sufficiently close to the premises to be likely to be affected by the authorised activities,
- b) has business interests that might be affected by the authorised activities, or
- c) represents persons who satisfy paragraph (a) or (b).

Each case will be decided upon its merits. This authority will not apply a rigid rule to its decision-making. It will however consider the following matters as recommended by the Guidance to local authorities:

- the size of the premises
- the nature of the premises
- the distance of the premises from the location of the person making the representation
- the potential impact of the premises (number of customers, routes likely to be taken by those visiting the establishment); and
- the nature of the complainant (not the personal characteristics of the complainant but the interests of the complainant, which may be relevant to the distance from the premises. For example, it could be reasonable for an authority to conclude that “sufficiently close to be likely to be affected” could have a different meaning for (a) a private resident (b) a residential school for children with truanting problems and (c) residential hostel for vulnerable adults).
- the catchment area of the premises (i.e. how far people travel to visit); and
- whether the person making the representation has business interests in that catchment area, that might be affected.

The Gambling Commission has emphasised to licensing authorities that ‘demand’ cannot be a factor in decisions. The Guidance also states that moral objections to gambling are not a valid reason to reject applications for premises licences. This is because such objections do not relate to the licensing objectives.

The Gambling Commission has also recommended that the licensing authority states that interested parties will include trade associations and trade unions, and residents and tenants' associations. However, this authority will not, however, generally view these bodies as interested parties unless they have a member who can be classed as one under the terms of the Gambling Act 2005, ie lives sufficiently close to the premises to be likely to be affected by the authorised activities.

Interested parties can be represented by other persons such as Ward Councillors, Councillors for the Division, MP's etc. Councillors who are part of the Licensing Committee dealing with the licence may not be able to represent an interested party, but they may recommend another councillor who may be able to help.

10. Exchange of Information

Licensing Authorities are required to include in their Gambling Policy Statement the principles to be applied by the Authority in exercising the functions under sections 29 and 30 of the Act with respect to the exchange of information between it and the Gambling Commission and the functions under section 350 of the Act with the respect to the exchange of information between it and the other persons listed in Schedule 6 to the Act.

The principle that this Licensing Authority will apply is that it will act in accordance with the provisions of the Gambling Act 2005 in its exchange of information and the provision that the Data Protection Act 1998 will not be contravened. The Licensing Authority will have regard to any Guidance issued by the Gambling Commission on this matter as well as any regulations issued by the Secretary of State under the powers provided in the Gambling Act 2005.

Any protocols established as regards information exchange with other bodies will be made available.

11. Enforcement

The Licensing Authority will act in accordance with the relevant legislation and guidance from the Gambling Commission and adopt the principles of better regulation set out in the Regulators Compliance Code.

In accordance with the Guidance, this licensing authority will endeavour to avoid duplication with other regulatory regimes so far as possible.

This licensing authority will also, as recommended in the Guidance, adopt a risk-based inspection programme.

Licensing authorities are required by regulation under the Gambling Act 2005 to state the principles to be applied by the authority in exercising the functions

under Part 15 of the Act with respect to the inspection of premises; and the powers under section 346 of the Act to institute criminal proceedings in respect of the offences specified.

This licensing authority's principles are that it will be guided by the Guidance and will endeavour to be:

Proportionate: regulators should only intervene when necessary: remedies should be appropriate to the risk posed, and costs identified and minimised;

Accountable: regulators must be able to justify decisions, and be subject to public scrutiny;

Consistent: rules and standards must be joined up and implemented fairly;

Transparent: regulators should be open, and keep regulations simple and user friendly; and

Targeted: regulation should be focused on the problem, and minimise side effects

The main enforcement and compliance role for this licensing authority in terms of the Gambling Act 2005 will be to ensure compliance with the Premises Licences and other permissions which it authorises.

The Gambling Commission will be the enforcement body for the Operator and Personal Licences.

Appendix 1

Introduction

Factors to be taken into account when considering applications for premises licences, permits and other permissions including matters that will be considered when determining whether to review a licence

1. Permits

(i) Unlicensed Family Entertainment Centre gaming machine permits (Statement of Principles on Permits - Schedule 10 paragraph 7)

Where a premise does not hold a Premises Licence but wishes to provide gaming machines, it may apply to the licensing authority for this permit.

The applicant must show that the premises will be wholly or mainly used for making gaming machines available for use (Section 238).

This licensing authority intends to require applicants to demonstrate:

- a) a full understanding of the maximum stakes and prizes of the gambling that is permissible in unlicensed family entertainment centres;
- b) that the applicant has no relevant convictions as set out in Schedule 7 of the Act; and
- c) that staff are trained to have a full understanding of the maximum stakes and prizes.

The Gambling Act 2005 states that a licensing authority may prepare a statement of principles that they propose to consider in determining the suitability of an applicant for a permit and in preparing this statement, and/or considering applications, it need not (but may) have regard to the licensing objectives and shall have regard to any relevant guidance issued by the Commission under section 25.

It should be noted that a licensing authority cannot attach conditions to this type of permit and that the "statement of principles" only applies to initial applications and not to renewals.

For initial applications, the Licensing Authority does not have to have regard to the licensing objectives but does need to have regard to any Gambling Commission guidance.

Guidance for local authorities states: "In their three year licensing policy statement, licensing authorities may include a statement of principles that they propose to apply when exercising their functions in considering applications

for permits, licensing authorities will want to give weight to child protection issues.

The Guidance also states: “An application for a permit may be granted only if the licensing authority is satisfied that the premises will be used as an unlicensed FEC, and if the chief officer of police has been consulted on the application. Relevant considerations to take into account would be the applicant’s suitability, such as any convictions that they may have that would make them unsuitable to operate a family entertainment centre; and the suitability of the premises in relation to their location and issues about disorder.”

This licensing authority will expect the applicant to show that there are policies and procedures in place to protect children from harm. Harm in this context is not confined to harm from gambling but includes wider child protection issues. The efficiency of such policies and procedures will each be considered on their merits and could include such matters as measures and staff training to deal with suspected truant schoolchildren, unsupervised very young children and children causing perceived problems in the vicinity of the premises.

With regard to renewals of these permits, a licensing authority may refuse an application for renewal of a permit only on the grounds that an authorised local authority officer has been refused access to the premises without reasonable excuse, or that renewal would not be reasonably consistent with pursuit of the licensing objectives.

(ii) (Alcohol) Licensed premises gaming machine permits – (Schedule 13 Para 4(1))

There is provision in the Act for premises licensed to sell alcohol for consumption on the premises, to automatically have 2 gaming machines, of categories C and/or D. The premises merely need to notify the licensing authority. The licensing authority can remove the automatic authorisation in respect of any particular premises if:

- a) provision of the machines is not reasonably consistent with the pursuit of the licensing objectives;
- b) gaming has taken place on the premises that breaches a condition of section 282 of the Gambling Act (i.e. that written notice has been provided to the licensing authority, that a fee has been provided and that any relevant code of practice issued by the Gambling Commission about the location and operation of the machine has been complied with)
- c) the premises are mainly used for gaming; or
- d) an offence under the Gambling Act has been committed on the premises

If a premises wishes to have more than 2 machines, then it needs to apply for a permit and the licensing authority must consider that application based upon the licensing objectives, any guidance issued by the Gambling Commission issued under Section 25 of the Gambling Act 2005, and “*such matters as they think relevant*.” This licensing authority considers that “such matters” will be decided on a case by case basis but that if any general themes arise it will endeavour to provide examples of such in this licensing policy statement by way of a revision.

It should be noted that the licensing authority can decide to grant the application with a smaller number of machines and/or a different category of machines than that applied for. Conditions (other than these) cannot be attached.

It should also be noted that the holder of a permit must comply with any Code of Practice issued by the Gambling Commission about the location and operation of the machine.

(iii) Prize Gaming Permits – (Statement of Principles on Permits - Schedule 14 Para 8 (3))

The Gambling Act 2005 states that a Licensing Authority may “prepare a statement of principles that they propose to apply in exercising their functions under this Schedule” which “may, in particular, specify matters that the licensing authority propose to consider in determining the suitability of the applicant for a permit”..

The Guidance states: “In their three year licensing policy statement, licensing authorities should include a statement of principles that they propose to apply when exercising their functions in considering applications for permits. In particular, they may want to set out the matters that they will take into account in determining the suitability of the applicant.

Given that the premises will particularly appeal to children and young persons, in considering what to take into account in the application process and what information to request for the applicant, this licensing authority will want to give weight to child protection issues and will ask the applicant to set out the types of gaming that he or she is intending to offer.

The applicant should be able to demonstrate that they understand the limits to stakes and prizes that are set out in Regulations and that the gaming offered is within the law.

In making its decision on an application for this permit the licensing authority does not need to have regard to the licensing objectives but must have regard to any Gambling Commission guidance.

It should be noted that there are conditions in the Gambling Act 2005 that the permit holder must comply with, but that the licensing authority cannot attach conditions. The conditions in the Act are:

- a) the limits on participation fees, as set out in regulations, must be complied with;
- b) all chances to participate in the gaming must be allocated on the premises on which the gaming is taking place and on one day; the game must be played and completed on the day the chances are allocated; and the result of the game must be made public in the premises on the day that it is played;
- c) the prize for which the game is played must not exceed the amount set out in regulations (if a money prize), or the prescribed value (if non-monetary prize); and
- d) participation in the gaming must not entitle the player to take part in any other gambling.

(iv) Club Gaming and Club Machine Permits

Members Clubs and Miners' welfare institutes (but not Commercial Clubs) may apply for a Club Gaming Permit or a Club Gaming machines permit. The Club Gaming Permit will enable the premises to provide gaming machines (3 machines of categories B, C or D), equal chance gaming and games of chance as set out in regulations. A Club machine permit will enable the premises to provide gaming machines (3 machines of categories B, C or D).

Guidance for local authorities states: "Members clubs must have at least 25 members and be established and conducted "wholly or mainly" for purposes other than gaming, unless the gaming is permitted by separate regulations. It is anticipated that this will cover bridge and whist clubs, which will replicate the position under the Gaming Act 1968. A members' club must be permanent in nature, not established to make commercial profit, and controlled by its members equally. Examples include working men's clubs, branches of Royal British Legion and clubs with political affiliations.

This Licensing Authority is aware that: "Licensing authorities may only refuse an application on the grounds that:

- (a) the applicant does not fulfil the requirements for a members' or commercial club or miners' welfare institute and therefore is not entitled to receive the type of permit for which it has applied;
- (b) the applicant's premises are used wholly or mainly by children and/or young persons;
- (c) an offence under the Act or a breach of a permit has been committed by the applicant while providing gaming facilities;
- (d) a permit held by the applicant has been cancelled in the previous ten years; or
- (e) an objection has been lodged by the Commission or the police

It should be noted that there is a 'fast-track' procedure available for premises that hold a Club Premises Certificate under the Licensing Act 2003. As the Gambling Commission's Guidance for local authorities states: "Under the fast-track procedure there is no opportunity for objections to be made by the Commission or the police, and the ground upon which an authority can refuse a permit are reduced " and "The grounds on which an application under the process may be refused are:

- (a) that the club is established primarily for gaming, other than gaming prescribed under schedule 12;
- (b) that in addition to the prescribed gaming, the applicant provides facilities for other gaming; or
- (c) that a club gaming permit or club machine permit issued to the applicant in the last ten years has been cancelled."

There are statutory conditions on club gaming permits that no child uses a category B3A, B4 or C machine on the premises and that the holder complies with any relevant provision of a code of practice about the location and operation of gaming machines.

Premises Licences

(i) Decision making - general:

Premises Licences will be subject to the permissions/restrictions set-out in the Gambling Act 2005 and Regulations, as well as specific mandatory and default conditions detailed in regulations issued by the Secretary of State. Licensing authorities are able to exclude default conditions and also attach others, where it is believed to be appropriate.

This Licensing Authority is aware that in making decisions about premises licences it should aim to permit the use of premises for gambling in so far as it thinks it:

- a) in accordance with any relevant code of practice issued by the Gambling Commission
- b) in accordance with any relevant guidance issued by the Gambling Commission
- c) reasonably consistent with the licensing objectives and
- d) in accordance with the authority's statement of licensing policy

As regards licence conditions, the Guidance for local authorities states that "Conditions imposed by the licensing authority must be proportionate to the circumstances which they are seeking to address. In particular, licensing authorities should ensure that the premises licence conditions:

- a) are relevant to the need to make the proposed building suitable as a gambling facility
- b) are directly related to the premises and the type of licence applied for;
- c) are fairly and reasonably related to the scale and type of premises: and
- d) are reasonable in all other respects.

The Commission also adds that "the licensing authority should take decisions on individual conditions on a case by case basis, although this will be against the background of any general policy set out in this guidance or their own licensing policy statement."

This licensing authority is in agreement with these statements by the Gambling Commission.

There are also conditions which the licensing authority cannot attach to premises licences which are:

- a) any condition on the premises licence which makes it impossible to comply with an operating licence condition
- b) conditions relating to gaming machine categories, numbers, or method of operation;
- c) conditions which provide that membership of a club or body be required (the Gambling Act 2005 specifically removes the membership requirement for casino and bingo clubs and this provision prevents it being reinstated) and
- d) conditions in relation to stakes, fees, winnings or prizes

The Gambling Commission has also emphasised to local authorities, that 'demand' cannot be a factor in decisions.

(ii) "premises":

Premises is defined in the Act as "any place". It is for the licensing authority to decide whether different parts of a building can be properly regarded as being separate premises and as the Gambling Commission states in its Guidance for local authorities, it "will always be a question of fact in the circumstances." The Gambling Commission does not however consider that areas of a building that are artificially or temporarily separate can be properly regarded as different premises.

This licensing authority takes particular note of the Gambling Commission's draft Guidance for local authorities which states that in considering applications for multiple licences for a building or those for a specific part of the building to be licensed, licensing authorities should be aware that:

- a) the third licensing objective seeks to protect children from being harmed by gambling. In practice that means not only preventing them from taking part in gambling, but also that they are not permitted to be in close proximity to gambling. Therefore premises should be configured so that children are not invited to participate in, have accidental access to, or closely observe gambling; and
- b) entrances and exits from parts of a building covered by one or more licences should be separate and identifiable so that the separation of different premises is not compromised and that people do not 'drift' into a gambling area."

This licensing authority will also take note of the Guidance that: "Licensing authorities should pay particular attention to applications where access to the licensed premises is through other premises (which themselves may be licensed or unlicensed). Clearly, there will be specific issues that authorities

should consider before granting such applications, for example, whether children can gain access; compatibility of the two establishments; and ability to comply with the requirements of the Act. But, in addition an overriding consideration should be whether, taken as a whole, the co-location of the licensed premises with other facilities has the effect of creating an arrangement that otherwise would, or should, be prohibited under the Act.”

(iii) Location:

This licensing authority notes the Guidance which states that: “Licensing authorities will need to consider the location of premises without the context of this¹ licensing objective. If an application for a licence or permit is received in relation to premises that are in an area noted for particular problems with organised crime for example, licensing authorities should think about what (if any) controls might be appropriate to prevent those premises becoming a source of crime. These might include conditions being put on the licence, such as a requirement for door supervisors”

The Commission also states in its Guidance: “For example, a licensing policy statement might set out that the authority will consider very carefully whether applications for premises licence in respect of certain gambling premises located very close to a school, or a centre for gambling addicts should be granted in light of the third licensing objective. Any such policy must, however, come with the qualification that each case will be decided on its merits, and will depend to a large extent on the type of gambling that it is proposed will be offered on the premises. If an applicant for a premises licence can show how licensing objective concerns can be overcome, that will have to be taken into account.” This licensing authority will adhere to this advice.

(iv) Planning:

Planning and licensing are different regulatory systems and will be dealt with separately. The Guidance states: “When dealing with a premises licence application for finished buildings, the licensing authority should not take into account whether those buildings have to comply with the necessary planning or building consents. Those matters should be dealt with under relevant planning control and building regulation powers, and not form part of the consideration for the premises licence. Section 210 of the 2005 Act prevents licensing authorities taking into account the likelihood of the proposal by the applicant obtaining planning or building consent when considering a premises licence application. Equally the grant of a gambling premises licence does not prejudice or prevent any action that may be appropriate under the law relating to planning or building.”

This authority will though listen to, and consider carefully, any concerns about conditions which are not able to be met by licensees due to planning restrictions should such a situation arise.

(v) Duplication

In accordance with the Guidance this licensing authority will endeavour to avoid duplication with other regulatory regimes so far as possible.

(vi) Door Supervisors

The Guidance states that licensing authorities may require persons operating premises in which gambling takes place to take measures such as the supervision of entrances; segregation of gambling from non-gambling areas frequented by children (assuming such non-gambling areas are compatible with requirements of the Act); and the supervision of gaming machines in non-adult gambling specific premises in order to pursue the licensing objectives.

It is to be noted that door supervisors at licensed casino or bingo premises are exempt from the requirements of the Private Security Industry Act 2001. Where an authority imposes door supervision requirements on such licences, the personnel will not need licensing under the 2001 Act.

However where a casino or bingo premises are licensed under the Licensing Act 2003 door supervisors employed are required to be licensed under the PSIA Act 2001 to enable them to perform their functions under that Act.

(vii) Licensing objectives

This licensing authority has considered the Gambling Commission's Guidance to local authorities in respect of the licensing objectives:

- **Preventing gambling from being a source of crime or disorder, being associated with crime or disorder or being used to support crime:**
- **Ensuring that gambling is conducted in a fair and open way:**
- **Protecting children and other vulnerable persons from being harmed or exploited by gambling:**

(viii) Reviews

Interested parties or responsible authorities can make requests for a review of a premises licence; however, it is for the licensing authority to decide whether the review is to be carried-out. This will be on the basis of whether the request for the review is relevant to the following matters:

- a) it is in accordance with any relevant code of practice issued by the Gambling Commission
- b) it is in accordance with any relevant guidance issued by the Gambling Commission
- c) it is reasonably consistent with the licensing objectives and
- d) it is in accordance with the authority's statement of licensing policy

Consideration will be given as to whether the request is frivolous, vexatious, or will certainly not cause this authority to wish alter/revoke/suspend the licence, or whether it is substantially the same as previous representations or requests for review.

The licensing authority can also initiate a review of a licence on the basis of any reason that it thinks is appropriate.

(ix) Provisional Statements

This licensing authority notes that the Guidance states:

“An applicant cannot obtain a full premises licence until the premises in which it is proposed to offer the gambling are constructed. The intention behind part 8 of the Act is the reference to “the premises” are to premises in which gambling may now take place. Thus a licence to use premises for gambling should only be issued in relation to premises that are ready to be used for gambling. This is why the Act allows an operator to apply for a provisional statement if the building is not yet complete, needs alteration, or he does not yet have a right to occupy it”

“It is a question of fact and degree whether premises are finished to a degree that they can be considered for a premises licence. For example, the fact that a wall needed painting would not stop a full assessment of the premises as gambling premises, and in such circumstances it would probably be wrong to insist that the applicant applied for a provisional statement rather than a premises licence.”

“Once an operator has completed a building, the licensing authority will be able to consider a premises licence application for it.”

“Requiring the building to be complete ensures that the authority can inspect it fully, as can other responsible authorities with inspection rights under Part 15 of the Act. Inspection will allow authorities to check that gambling facilities comply with all necessary legal requirements. For example, Category C and D machines in a licensed family entertainment centre must be situated so that people under 18 do not have access to the category C machines. The physical location of the machines will be an important part of this, and inspection will allow the authority to check that the layout complies with the operator’s proposals and the legal requirements.” (in relation to Provisional Licences)

In terms of representations about premises licence applications, following the grant of a provisional statement, the Guidance states: “If a provisional statement has been granted, the licensing authority is constrained in the matters it can consider when an application for a premises is made subsequently in relation to the same premises. No further representations from relevant authorities or interested parties can be taken into account unless they concern matters which could not have been addressed at the provisional statement stage, or they reflect a change in the applicant’s circumstances. In addition, the authority may refuse the premises licence (or grant it on terms different to those attached to the provisional statement) only by reference to matters:

- a) which could not have been raised by objectors at the provisional licence stage; or
- b) which is in the authority’s opinion reflect a change in the operator’s circumstances.

This authority also has noted in the Guidance that “A licensing authority must not have regard to whether or not a proposal by the applicant is likely to be permitted in accordance with planning or building law.”

(x) Adult Gaming Centres

This licensing authority particularly notes that the Guidance states: “No-one under the age of 18 is permitted to enter an Adult Gaming Centre. Licensing authorities will wish to have particular regard to the location of an entry to Adult Gaming Centres to minimise the opportunities for children to gain access. This may be of particular importance in areas where young people may be unsupervised and an Adult Gaming Centre is in a complex, such as a shopping centre or airport.”

This licensing authority will expect applicants to offer their own measures to meet the licensing objectives which could cover such issues as:

- Proof of age schemes
- CCTV
- Supervision of entrances
- Physical separation of areas
- Location of entry
- Notices/signage
- Specific opening hours
- Self barring schemes
- Provision of information/leaflets/helpline numbers for organisations such as GamCare

This list is not mandatory or exhaustive but indicates example measures.

(xi) (Licensed) Family Entertainment Centres

This licensing authority will, in accordance with the Guidance refer to the Commission's website to see any conditions that apply to operator licences covering the way in which the area containing the category C machines should be delineated. This licensing authority will also make itself aware of any mandatory or default conditions on these premises licences, when they have been published.

This licensing authority will expect applicants to offer their own measures to meet the licensing objectives which could cover such issues as:

- CCTV
- Supervision of entrances/machine areas
- Physical separation of areas
- Location of entry
- Notices/signage
- Specific opening hours
- Self barring schemes
- Provision of information/leaflets/helpline numbers for organisations such as GamCare
- Measures/training for staff to identify and deal with suspected truant schoolchildren on the premises

This list is not mandatory or exhaustive but indicates example measures.

(xii) Tracks

This licensing authority is aware that the Gambling Commission may provide specific guidance as regards tracks. We shall have regard to this Guidance in the discharge of our functions.

(xiii) Casinos

This licensing authority will have regard to the Gambling Commission's guidance.

(xiv) Bingo

This licensing authority will have regard to the Gambling Commission's guidance.

(xv) Temporary Use Notices

There are a number of statutory limits as regards Temporary Use Notices. It is noted that it falls to the licensing authority to decide what constitutes a 'set of premises' where Temporary Use Notices are received relating to the same building/site (see Gambling Commission's Guidance for Local Authorities).

(xvi) Occasional Use Notices

The licensing authority has very little discretion as regards these notices aside from ensuring that the statutory limit of 8 days in a calendar year is not exceeded. The licensing authority will need to consider the definition of a 'track' and whether the applicant is permitted to avail him/herself of the notice.

(xvii) Travelling Fairs

It will fall to this licensing authority to decide whether, where category D machines and/or equal chance prize gaming without a permit is to be made available for use at travelling fairs, the statutory requirement that the facilities for gambling amount to no more than an ancillary amusement at the fair is met.

The licensing authority will also consider whether the applicant falls within the statutory definition of a travelling fair.

It has been noted that the 27-day statutory maximum for the land being used as a fair, is per calendar year, and that it applies to the piece of land on which the fairs are held, regardless of whether it is the same or different travelling fairs occupying the land. This licensing authority will work with its neighbouring authorities to ensure that land which crosses shared boundaries is monitored so that the statutory limits are not exceeded.

(xviii) Betting premises

Betting machines –The Guidance states: “Section 181 contains an express power for licensing authorities to restrict the number of betting machines, their nature and the circumstances in which they are made available by attaching a licence condition to a betting premises licence or to a casino premises licence (where betting is permitted in the casino). When considering whether to impose a condition to restrict the number of betting machines in particular premises, the licensing authority, amongst other things, should take into account the size of the premises, the number of counter positions available for person-to-person transactions, and the ability of staff to monitor the use of the machines by children and young persons (it is an offence for those under 18 to bet) or by vulnerable persons.”

Appendix 3

Responsible Authorities' contact details

Licensing Authority:

Legal Services, Tonbridge and Malling Borough Council
Gibson Building, Gibson Drive, Kings Hill, West Malling, Kent, ME19 4LZ
licensing.services@tmbc.gov.uk

Gambling Commission

Victoria Square House, Victoria Square, Birmingham B2 4BP
info@gamblingcommission.gov.uk

The Chief Officer of Police – (West Division)

Kent Police, The Police Station, Pembury Road, Tonbridge, Kent, TN9 2HS
West.division.licensing@kent.pnn.police.uk

Kent Fire and Rescue Service

Tonbridge Fire Station, 424 Vale Road, Tonbridge, Kent, TN9 1SW
tonbridgefiresafety@kent.fire-uk.org

Local Planning Authority

Tonbridge and Malling Borough Council, Gibson Building, Gibson Drive, Kings Hill, West Malling, Kent, ME19 4LZ
planning.applications@tmbc.gov.uk

Environmental Protection/ Health and Safety Authorities

Tonbridge and Malling Borough Council, Gibson Building, Gibson Drive, Kings Hill, West Malling, Kent, ME19 4LZ
environmental.protection@tmbc.gov.uk

Kent Safeguarding Children Board

Room 2.60, Sessions House, County Road, Maidstone, Kent, ME14 1XQ
kscb@kent.gov.uk

HM Revenue and Customs

Medvale House, Mote Road, Maidstone, Kent ME15 6AE
www.hmrc.gov.uk

Any other body prescribed in regulations made by the Secretary of State.

Appendix 4

Summary of machine provisions by premises

Premises type	Machine category							
	A	B1	B2	B3	B3A	B4	C	D
Large casino (machine/table ratio of 5-1 up to maximum)	Maximum of 150 machines Any combination of machines in categories B to D (except B3A machines), within the total limit of 150 (subject to machine/table ratio)							
Small casino (machine/table ratio of 2-1 up to maximum)	Maximum of 80 machines Any combination of machines in categories B to D (except B3A machines), within the total limit of 80 (subject to machine/table ratio)							
Pre-2005 Act casino (no machine/table ratio)	Maximum of 20 machines categories B to D (except B3A machines), or any number of C or D machines instead							
Betting premises and tracks occupied by pool betting	Maximum of 4 machines categories B2 to D (except B3A machines)							
Bingo premises				Maximum of 20% of the total number of gaming machines which are available for use on the premises categories B3 or B4**			No limit on category C or D machines	
Adult gaming centre				Maximum of 20% of the total number of gaming machines which are available for use on the premises categories B3 or B4**			No limit on category C or D machines	
Family entertainment centre (with premises licence)							No limit on category C or D machines	
Family entertainment centre (with permit)							No limit on category D machines	
Clubs or miners' welfare institute (with permits)				Maximum of 3 machines in categories B3A or B4 to D*				
Qualifying alcohol-licensed premises							1 or 2 machines of category C or D automatic upon notification	
Qualifying alcohol-licensed premises (with gaming machine permit)							Number of category C-D machines as specified on permit	
Travelling fair							No limit on category D machines	

Premises type	Machine category							
	A	B1	B2	B3	B3A	B4	C	D
	<p>* It should be noted that members' clubs and miners' welfare institutes are entitled to site a total of three machines in categories B3A to D but only one B3A machine can be sited as part of this entitlement. Commercial clubs are entitled to a total of three machines in categories B4 to D.</p> <p>** Adult gaming centre and bingo premises are entitled to make available a number of Category B gaming machines not exceeding 20% of the total number of gaming machines which are available for use on the premises. Premises in existence before 13 July 2011 are entitled to make available four (adult gaming centre premises) or eight (bingo premises) category B gaming machines, or 20% of the total number of gaming machines, whichever is the greater. Adult gaming centre premises and bingo premises licences granted on or after 13 July 2011 but before 1 April 2014 are entitled to a maximum of four or eight category B gaming machines or 20% of the total number of gaming machines, whichever is the greater; from 1 April 2014 these premises will be entitled to 20% of the total number of gaming machines only. But not B3A machines.</p>							

Appendix 5

Summary of gaming machine categories and entitlements

Category of machine	Maximum stake (From Jan 2014)	Maximum prize (From Jan 2014)
B1	£5	£10,000*
B2**	£100	£500
B3	£2	£500
B3A	£2	£500
B4	£2	£400
C	£1	£100
D - non-money prize (other than a crane grab machine)	30p	£8
D – non-money prize (crane grab machine)	£1	£50
D (money prize)	10p	£5
D - combined money and non-money prize (other than a coin pusher or penny falls machine)	10p	£8 (of which no more than £5 may be a money prize)
D - combined money and non-money prize (coin pusher or penny falls)	20p	£20 (of which no more than £10 may be a money prize)

*With the option of a maximum £20,000 linked progressive jackpot on a premises basis only.

Note: This summary of gaming machine categories and entitlements was updated through the Statutory Instruments 2014 No.45 – **BETTING, GAMING AND LOTTERIES – The Categories of Gaming Machine (Amendment) Regulations 2014**, which came into force on 14 January 2014.

Appendix 6

Summary of gaming entitlements for clubs and alcohol-licensed premises

	Members' club or MW institute with club gaming permit	Bridge or whist club	Members' club or commercial club with club machine permit	Members' club, commercial club or MW institute without a club gaming permit	Pubs and other alcohol-licensed premises
Equal chance gaming	Yes	Bridge and/or Whist only	Yes	Yes	Yes
Limits on stakes	No limit	No limit	Poker £1000 per week £250 per day £10 per person per game Other gaming No limit	Poker £1000 per week £250 per day £10 per person per game Other gaming No limit	Poker £100 per premises per day Other gaming £5 per person per game Cribbage & dominoes No limit
Limits on prizes	No limit	No limit	Poker £250 per game Other gaming No limit	Poker £250 per game Other gaming No limit	Poker £100 per game Other gaming No limit
Maximum participation fees – per person per day	Bridge and/or whist* £20 Other gaming £3	£18 (without club gaming permit) £20 (with club gaming permit)	Bridge and/or whist* £18 Other gaming £3 (commercial club) £1 (members' club)	Bridge and/or whist* £18 Other gaming £1	None permitted
Bankers or unequal chance gaming	Pontoon Chemin de Fer	None permitted	None permitted	None permitted	None permitted
Limits on bingo	Maximum of £2,000 per week in stakes/prizes. If more then will need an operating licence.	No bingo permitted	Maximum of £2,000 per week in stakes/prizes. If more then will need an operating licence.	Maximum of £2,000 per week in stakes/prizes. If more then will need an operating licence.	Maximum of £2,000 per week in stakes/prizes. If more then will need an operating licence.

* On a day when no other facilities for gaming are provided

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Item CB 15/52 referred from Cabinet minutes of 7 October 2015

TREASURY MANAGEMENT MID-YEAR REVIEW 2015/16

The report of the Director of Finance and Transformation provided an update on treasury management activity undertaken during the period April to July 2015/16. It also included a mid-year review of the Annual Investment Strategy and risk parameters. Members were invited to endorse the action taken by officers in respect of treasury management activity to date and to retain the current risk parameters.

The report had also been considered by the Audit Committee at its meeting on 7 September and the action commended for endorsement.

RECOMMENDED: That the following be commended to the Council:

- (1) the action taken by officers in respect of treasury management activity for the period April to July 2015 be endorsed; and
- (2) the existing parameters intended to limit the Council's exposure to investment risks be retained.

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TONBRIDGE & MALLING BOROUGH COUNCIL

CABINET

07 October 2015

Report of the Director of Finance and Transformation

Part 1- Public

Matters for Recommendation to Council

1 TREASURY MANAGEMENT MID-YEAR REVIEW 2015/16

A report detailing treasury management activity undertaken during the period April to July of the current financial year was considered by Audit Committee on 7 September. The report also reminded Members of the parameters that define the Council's risk appetite. Cabinet are invited to recommend that Council endorse the action taken by officers in respect of treasury management activity to date and retain the current risk parameters.

1.1 Introduction

- 1.1.1 Council adopted the 2009 CIPFA Code of Practice for Treasury Management on 18 February 2010. That Code, and subsequent updates, requires as a minimum that full Council approves an annual strategy prior to the start of the financial year, a mid-year review of that strategy (this report) and an outturn report.
- 1.1.2 Additional reports updating Members on current activity are presented to the Audit Committee and performance is also reported on a regular basis to the Finance, Innovation and Property Advisory Board. The combination of Member reporting and detailed scrutiny of activity ensures this Council complies with best practice.
- 1.1.3 The treasury management report presented to the Audit Committee on 7 September 2015 is replicated in full at **[Appendix 1]**.

1.2 2015/16 Treasury Management Performance

- 1.2.1 A gross annualised return of 0.71% was generated on investments for the period April to July 2015. In cash terms, investment income of £62,500 is £6,500 better than our profiled budget for the same period.
- 1.2.2 Investment returns offered by banks and building societies are broadly the same today as they were a year ago. The additional income referred to above can be attributed to both core fund and cash flow balances being higher than anticipated. Cash flow balances, in particular, are benefitting from a change by Government in the timing of Business Rate income paid over to themselves and precepting

authorities which has allowed greater use to be made of higher yielding term deposits. This enhanced performance is expected to continue such that investment income for the year as a whole will be £15,000 to £20,000 better than budget.

- 1.2.3 All investments undertaken in 2015/16 complied in full with the requirements of the 2015/16 Annual Investment Strategy including prudential and treasury limits.

1.3 Review of Risk Parameters and Regulatory Changes

- 1.3.1 The 2015/16 Investment Strategy was approved by full Council in February 2015. The Strategy limits the Council's exposure to investment risks via the specification of minimum sovereign and counterparty credit ratings and associated exposure limits. The Strategy also imposes restrictions on the duration of an investment and the type of investment instrument that can be used. In conducting a mid-year review of the Strategy no change to the Council's current risk appetite is proposed.

1.4 Legal Implications

- 1.4.1 Under Section 151 of the Local Government Act 1972, the Section 151 Officer has statutory duties in relation to the financial administration and stewardship of the authority, including securing effective arrangements for treasury management.
- 1.4.2 This mid-year review fulfils a requirement in The Chartered Institute of Public Finance & Accountancy's Code of Practice on Treasury Management 2009.

1.5 Financial and Value for Money Considerations

- 1.5.1 As outlined above.

1.6 Risk Assessment

- 1.6.1 The application of best practice, including the regular reporting and scrutiny of treasury management activity as identified by the CIPFA Code, is considered to be the most effective way of mitigating the risks associated with treasury management.

1.7 Equality Impact Assessment

- 1.7.1 The decisions recommended through this paper have a remote or low relevance to the substance of the Equality Act. There is no perceived impact on end users.

1.8 Recommendations

- 1.8.1 Audit Committee endorsed the recommendations contained in the report to them on 7 September 2015 [**Appendix 1**] and as detailed below. Cabinet is invited to **RECOMMEND** that Council:

- 1) Endorse the action taken by officers in respect of treasury management activity for the period April to July 2015.
- 2) Retain the existing parameters intended to limit the Council's exposure to investment risks.

Background papers:

contact: Michael Withey

Nil

Sharon Shelton
Director of Finance and Transformation

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TONBRIDGE & MALLING BOROUGH COUNCIL

AUDIT COMMITTEE

07 September 2015

Report of the Director of Finance & Transformation

Part 1- Public

Matters for Recommendation to Cabinet – Council Decision

1 TREASURY MANAGEMENT MID-YEAR REVIEW 2015/16

This report provides an update on treasury management activity undertaken during the period April to July of the current financial year. The report also includes a mid-year review of the current financial year's Annual Investment Strategy and reminds Members of the parameters that define the Council's risk appetite. Members are invited to endorse the action taken by officers in respect of treasury management activity to date and to retain the current risk parameters.

1.1 Introduction

1.1.1 The Chartered Institute of Public Finance and Accountancy's (CIPFA) Code of Practice on Treasury Management (revised November 2009) was adopted by this Council on 18 February 2010.

1.1.2 The primary requirements of the 2009 Code and its subsequent revisions are as follows:

- Creation and maintenance of a Treasury Management Policy Statement which sets out the policies and objectives of the Council's treasury management activities.
- Creation and maintenance of Treasury Management Practices which set out the manner in which the Council will seek to achieve those policies and objectives.
- Receipt by the full Council of an Annual Treasury Management Strategy Statement, including the Annual Investment Strategy, for the year ahead; a mid-year Review Report (this report) and an Annual Report (stewardship report) covering activities during the previous year.
- Delegation by the Council of responsibilities for implementing and monitoring treasury management policies and practices and for the execution and administration of treasury management decisions.

- Delegation by the Council of the role of scrutiny of treasury management strategy and policies to a specific named body. For this Council the delegated body is the Audit Committee.

1.1.3 This mid-year report has been prepared in compliance with CIPFA's Code of Practice, and covers the following:

- An economic update and revised interest rate forecast.
- Investment performance for April to July of the 2015/16 financial year.
- Use of borrowing.
- Compliance with Treasury and Prudential Limits for 2015/16.
- A review of the risk parameters contained in the 2015/16 Annual Investment Strategy.

1.2 Economic Background

1.2.1 Thus far in 2015/16:

- The May Inflation Report saw the Bank of England reduce its forecast for annual growth in 2015 to 2.5% (from 2.9%) and in 2016 to 2.7% (also from 2.9%). Contributing factors to these downward revisions included a slowing of growth in Q1 2015 to 0.4% (2.9% y/y) and a more pessimistic view on the rate and timing of growth in labour productivity. Growth in Q2 rebounded returning 0.7% for the quarter (2.6% y/y).
- CPI inflation fell to -0.1% in April, rose to 0.1% in May and fell again to 0.0% in June. This dip in inflation is only expected to last for a short period until the fall in oil and food prices drop out of the twelve month calculation. CPI is expected to rise especially during Q4 2015 and be marginally higher than the 2.0% target two years from now.
- In June the Greek government, led by an anti-austerity party Syriza, made a strong push to renegotiate the country's debt repayments. This was met with a robust rejection by the European Central Bank and European Union. Following the imposition of capital controls and temporary closure of Greek banks a third bailout package was agreed.
- In July, Governor Carney, commented that an interest rate rise would come 'into sharper relief around the turn of the year'. The misconception that this implied a rate rise in 2015 has since been dispelled. Since then, the August Monetary Policy Committee meeting saw one of the nine member committee vote in favour of an immediate rate rise.
- The American economy experienced disappointing growth in Q1 2015. GDP grew by 0.6% on an annualised basis due to bad weather hitting construction and consumer spending, a ports strike and the near 20% appreciation in the value of the dollar. GDP recovered strongly in Q2 rising 2.3% y/y and a

resumption to full recovery from the financial crisis. To counter inflationary pressures the Federal Reserve is expected to raise interest rates before the end of 2015 and be the first western economy to do so.

- The ECB announced a €1.1 trillion programme of quantitative easing in January 2015. The programme which started in March and will run to September 2016 has already had a beneficial impact in improving confidence and sentiment in the EZ. The recent trend of marginal increases in GDP has continued with GDP of 0.4% in Q1 2015 (1.0% y/y) and 0.3% in Q2 (1.25% y/y). A period of deflation also ended when inflation returned to 0.0% in April.
- In an effort to maintain growth in the Chinese economy (7% target) the Yuan was devalued in August.

1.3 Interest Rate Forecast

- 1.3.1 The Bank Rate has remained at an emergency level of 0.5% for the last 6 years. Capita's latest forecast, updated May 2015, anticipates the Bank Rate will remain at this level for a further 9 months before rising in the second quarter of 2016. This is six months later than anticipated in the 2015/16 Annual Investment Strategy.

Rate	Now %	Sep- 15 %	Dec- 15 %	Mar- 16 %	Jun- 16 %	Sep- 16 %	Dec- 16 %	Mar- 17 %	Jun- 17 %	Sep- 17 %
Bank Rate	0.50	0.50	0.50	0.50	0.75	0.75	1.00	1.00	1.25	1.50
3 mth LIBID	0.46	0.50	0.60	0.70	0.80	0.90	1.10	1.30	1.40	1.50
6 mth LIBID	0.63	0.70	0.80	0.90	1.00	1.10	1.30	1.50	1.60	1.70
12 mth LIBID	0.94	1.00	1.10	1.20	1.30	1.40	1.60	1.80	1.90	2.00
25yr PWLB	3.31	3.40	3.60	3.80	3.90	4.00	4.10	4.20	4.30	4.40

1.4 Investment Portfolio

- 1.4.1 The Annual Investment Strategy for the 2015/16 financial year was approved by Council on 17 February 2015. The Strategy outlines the Council's investment priorities as follows:

- Security of Capital,
- Liquidity.

- 1.4.2 In addition the Council aims to achieve the optimum return (yield) on investments commensurate with the proper levels of security and liquidity. In particular, for 2015/16 the Council will 'avoid locking into longer term deals while investment rates continue their current low levels unless attractive rates are available with counterparties of particularly high creditworthiness which make longer term deals worthwhile'. The Council has adopted Capita's recommended creditworthiness approach which incorporates the credit ratings from each of the three main rating agencies and includes sovereign credit ratings and a market view of risk using credit default swap (CDS) data.

1.4.3 A full list of investments held on 31 July 2015 and our lending list in operation on that date are provided at **[Annexes 1 and 2]**.

1.4.4 As illustrated above, investment rates available in the market are at a historical low. The average level of cash flow funds available for investment purposes to the end of July 2015 was £12.7m. These funds were available on a temporary basis and the amount mainly dependent on the timing of precept payments, receipt of grants and progress on the capital programme. The Authority holds £13.5m of core cash balances. These funds are for the most part available to invest for more than one year, albeit some funds will need to be recalled towards the end of the financial year to top-up daily cash balances.

1.4.5 At the end of July 2015 funds invested and interest earned is set out in the table below:

	Funds invested at 31 July 2015 £m	Average duration to maturity Days	Weighted average rate of return %	Interest earned to 31 July 2015 £	Gross annualised return %	LIBID benchmark %
Cash flow	12.25	87	0.69	26,300	0.62	0.36 (7 Day)
Core funds	13.45	177	0.83	36,200	0.80	0.46 (3 Month)
Total	25.70	134	0.76	62,500	0.71	0.41 (Average)

1.4.6 Interest earned of £62,500 is £6,500 better than budget for the same period and 30 basis points above benchmark. The additional income is wholly attributed to higher than expected cash flow and core fund balances. The pattern of income generation is expected to be maintained throughout the year such that Income for the financial year as a whole will be £15,000 to £20,000 better than budget.

1.4.7 **Cash flow.** Our daily cash flow balances for the year ahead are modelled at the start of the financial year. That cash flow model is then updated daily and reviewed on a regular basis. The majority of our cash flow surpluses are invested overnight in bank deposit accounts and money market funds to ensure sufficient short term liquidity to meet payment obligations. However, when cash surpluses permit, fixed term investments are undertaken to take advantage of the higher yields available. In April £5m nine month fixed term investments were undertaken yielding circa 0.8%. More recently £4m six month fixed term investments have been placed yielding an average of 0.7%. Further, shorter duration, term deposits are likely to be placed in the autumn to take advantage of peak cash flow balances.

1.4.8 **Core funds.** Following the transfer of all core fund investments from our external fund manager to in-house management in August 2014, the opportunity to

enhance yield by extending duration has continued. The current core fund portfolio includes a mix of nine and twelve month deposits together with one high yielding call account. The pattern of maturities (each month from December to April) is designed to ensure additional liquidity is available to the Council to support spending towards the end of the financial year and to take advantage of improved offers from banks as we approach a rise in Bank Rate.

1.5 Use of Borrowing

1.5.1 It is a statutory duty for the Council to determine and keep under review the 'Affordable Borrowing Limits' by way of the Prudential Indicators (affordability limits) set out in the approved 2015/16 Investment Strategy. The Authority is debt free and uses a combination of reserves and revenue contributions to finance the Capital Plan. Borrowing on a temporary basis using overdraft facilities may be required from time to time to meet liquidity needs. However, no borrowing was undertaken in the period April 2015 to July 2015.

1.6 Compliance with the Annual Investment Strategy

1.6.1 Throughout April to July 2015 all of the requirements contained in the 2015/16 Annual Investment Strategy intended to limit the Council's exposure to investment risks (minimum sovereign and counterparty credit rating; durational limits; exposure limits in respect of counterparties, groups of related counterparty and sovereigns; and specified and non-specified investment limits) have been complied with.

1.6.2 In addition the Council has operated within the treasury limits and prudential indicators set out in the 2015/16 Annual Investment Strategy and in compliance with the Council's Treasury Management Practices. The Prudential and Treasury Indicators can be found at **[Annex 3]** to this report.

1.7 Review of Risk Parameters

1.7.1 Members will recall the detailed consideration that was given to the 2015/16 Annual Investment Strategy at the January 2015 meeting of the Audit Committee. The strategy includes the parameters that aim to limit the Council's exposure to investment risks by requiring investments to be placed with highly credit rated institutions and that those investments are diversified across a range of counterparties. More specifically the 2015/16 Annual Investment Strategy requires:

- Counterparties must be regulated by a Sovereign rated AA- or better as recognised by each of the three main rating agencies (Fitch, Moody's or Standard & Poor's).
- Whilst 100% of funds can be invested in the UK, exposure to non-UK banks is restricted to no more than 20% of funds per Sovereign.

- Exposure to individual counterparties / groups of related counterparty must not exceed 20% of funds (25% of funds for part state owned UK Banks).
- In selecting suitable counterparties the Council has adopted Capita's credit worthiness methodology. The methodology combines the output from all three credit rating agencies including credit watches / outlooks and credit default swap data to assign a durational band to a financial institution (100 days, 6 months, 12 months, 5 years, etc.). At the time of placing an investment the financial institution must be assigned a durational band of at least 100 days. This broadly equates to a minimum long term credit rating of Fitch A- (high) and a short term credit rating of Fitch F1 (strong).
- The duration of an investment in a foreign bank must not exceed Capita's recommendation. For UK financial institutions Capita's duration recommendation can be enhanced by up to three months subject to the combined duration (Capita recommendation plus the enhancement) not exceeding 12 months.
- Money Market funds should be rated Fitch AAmmf or equivalent and exposure limited to no more than 20% per fund.
- Enhanced Money Funds should be rated AAA and exposure limited to no more than 10% per fund and 20% to all such funds.

1.7.2 The 2015/16 Strategy also limits the type of instrument (e.g. term deposits, floating rate notes, etc.) that can be used and establishes a maximum investment duration (2 years other than Gilts). Given our overriding investment priorities of security of capital and liquidity the Council does not invest in equities.

1.7.3 In preparing this report the risk parameters have been reviewed and are considered appropriate to protect the Council's interests. The Council has access, both directly and via brokers, to a sufficient number of high credit rated financial institutions enabling it to maintain a diverse portfolio; with an appropriate level of liquidity; that makes a positive contribution to income generation. No changes to the risk parameters are proposed at the present time.

1.8 Legal Implications

1.8.1 Under Section 151 of the Local Government Act 1972, the Section 151 Officer has statutory duties in relation to the financial administration and stewardship of the authority including securing effective arrangements for treasury management. In addition, Capita are employed to provide independent advice on legislative and professional changes that impact on the treasury management function.

1.8.2 This mid-year review report fulfils a requirement in The Chartered Institute of Public Finance & Accountancy's Code of Practice on Treasury Management 2009.

1.9 Financial and Value for Money Considerations

- 1.9.1 The Bank Rate has remained at a historic low of 0.5% for over 6 years. Capita, our treasury advisors, in common with other market forecasts, anticipate a rise in Bank Rate sometime during the second quarter of 2016.
- 1.9.2 The Funding for Lending initiative introduced by the Bank of England in summer 2012 had a significant downward impact on returns being offered by financial institutions at the time and that impact has continued.
- 1.9.3 At the end of July Investment income is £6,500 better than expected. This pattern is expected to be repeated throughout 2015/16 resulting in income for the year as a whole being £15,000 to £20,000 above budget.
- 1.9.4 Investment performance is monitored against relevant benchmarks and compared to other local authorities in Kent and the broader local authority pool via Capita's benchmarking service.

1.10 Risk Assessment

- 1.10.1 The application of best practice, including the regular reporting and scrutiny of treasury management activity, as identified by the CIPFA Code is considered to be the most effective way of mitigating the risks associated with treasury management.

1.11 Equality Impact Assessment

- 1.11.1 The decisions recommended through this paper have a remote or low relevance to the substance of the Equality Act. There is no perceived impact on end users.

1.12 Recommendations

- 1.12.1 Members are invited to **RECOMMEND** that Cabinet:

- 1) Endorse the action taken by officers in respect of treasury management activity for the period April to July 2015.
- 2) Retain the existing parameters intended to limit the Council's exposure to investment risks.

Background papers:

contact: Mike Withey

Capita Interest Rate Forecast (August 2015)

Sharon Shelton
Director of Finance and Transformation

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Investment Summary as at 31 July 2015

Counterparty	Sovereign	Fitch Credit rating		Capita Credit Worthiness/ Suggested Duration Limit	Investment type (Specified/Non-specified) [Statement date to Maturity]	Investment from	Maturity Date	Principal sum invested £	Return (coupon / yield at purchase) %	% of total investments	Instrument type	Core Funds £	Cash Flow £
		Long Term	Short Term										
Bank of Scotland	UK	A+	F1	6 months	Specified	14/04/2015	14/01/2016	1,000,000	0.80%		Fixed deposit	1,000,000	
Bank of Scotland	UK	A+	F1	6 months	Specified	21/04/2015	21/01/2016	1,000,000	0.80%		Fixed deposit		1,000,000
Bank of Scotland Total								2,000,000		7.78%			
Barclays Bank	UK	A	F1	6 months	Specified	28/04/2015	28/01/2016	1,000,000	0.80%		Fixed deposit		1,000,000
Barclays Bank	UK	A	F1	6 months	Specified	29/05/2015	29/02/2016	1,250,000	0.81%		Fixed deposit	1,250,000	
Barclays Bank	UK	A	F1	6 months	Specified	22/07/2015	22/04/2016	1,250,000	0.86%		Fixed deposit	1,250,000	
Barclays Bank Total								3,500,000		13.62%			
BNP Paribas MMF	n/a	AAA	mmf (Eq)	5 years	Specified	31/07/2015	03/08/2015	1,717,000	0.48%		Call - MMF		1,717,000
BNP Paribas MMF Total								1,717,000		6.68%			
Handelsbanken	Sweden	AA-	F1+	1 year	Specified	31/07/2015	03/08/2015	1,000,000	0.45%		Call		1,000,000
Handelsbanken Bank Total								1,000,000		3.89%			
Insight Liquidity Plus EMF [1]	n/a	AAA	f/S1 (S&P)	5 years	Specified	18/02/2014	03/08/2015	1,050,000	0.33%		Call - EMF		1,050,000
Insight Liquidity Funds Total								1,050,000		4.09%			
Lloyds Bank	UK	A+	F1	6 months	Specified	14/04/2015	13/04/2016	1,000,000	1.00%		Fixed deposit	1,000,000	
Lloyds Bank	UK	A+	F1	6 months	Specified	21/04/2015	21/01/2016	1,000,000	0.80%		Fixed deposit		1,000,000
Lloyds Bank	UK	A+	F1	6 months	Specified	24/07/2015	25/01/2016	500,000	0.80%		Fixed deposit	500,000	
Lloyds Bank Total								2,500,000		9.73%			
NatWest Bank Call Account	UK	BBB+	F2	1 year	Specified	31/07/2015	03/08/2015	10,000	0.25%		Call		10,000
National Westminster Bank Total								10,000		0.04%			
Nordea Bank AB	Sweden	AA-	F1+	1 year	Specified	23/07/2015	22/01/2016	500,000	0.64%		CD		500,000
Nordea Bank AB Total								500,000		1.95%			
Nationwide Building Society	UK	A	F1	6 months	Specified	16/03/2015	16/12/2015	1,250,000	0.79%		Fixed deposit	1,250,000	
Nationwide Building Society	UK	A	F1	6 months	Specified	29/04/2015	29/01/2016	1,000,000	0.80%		Fixed deposit		1,000,000
Nationwide Building Society	UK	A	F1	6 months	Specified	29/05/2015	29/02/2016	1,250,000	0.79%		Fixed deposit	1,250,000	
Nationwide Building Society Total								3,500,000		13.62%			
Santander UK Plc	UK	A	F1	6 months	Specified	31/07/2015	03/08/2015	4,924,000	0.80%		Call	2,451,000	2,473,000
Santander UK Plc Total								4,924,000		19.16%			
RBS	UK	BBB+	F2	1 year	Specified	23/03/2015	23/03/2016	1,000,000	0.90%		CD	1,000,000	
RBS Total								1,000,000		3.89%			
Standard Chartered Bank	UK	AA-	F1+	6 months	Specified	24/04/2015	25/01/2016	1,000,000	0.80%		CD		1,000,000
Standard Chartered Bank	UK	AA-	F1+	6 months	Specified	05/06/2015	04/03/2016	1,000,000	0.80%		CD	1,000,000	
Standard Chartered Bank	UK	AA-	F1+	6 months	Specified	10/06/2015	10/03/2016	1,500,000	0.81%		CD	1,500,000	
Standard Chartered Bank	UK	AA-	F1+	6 months	Specified	08/07/2015	08/01/2016	500,000	0.72%		CD		500,000
Standard Chartered Bank Total								4,000,000		15.56%			
Total invested								25,701,000		100.00%		13,451,000	12,250,000

Number of investments	23	Average investment value £	1,117,000
Number of counter parties	12	Average investment per counter party £	2,142,000
Group exposures:		Core £	Cash £
RBS + National Westminster (UK Nationalised 25% or £3.3m per fund)		1,000,000	10,000
Bank of Scotland + Lloyds (20% or £2.6m per fund)		2,500,000	2,000,000
			Combined £
			%
			1,010,000
			3.93
			4,500,000
			17.51

Total non-specified investments should be less than 60% of Core Funds 0.00%

[1] Return for previous month.

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Tonbridge and Malling Borough Council Internal Lending List

Checked against Capita Duration Matrix dated 31/07/15								
Minimum investment criteria is Capita Green (100 days) Duration Band (entry point broadly equates to Fitch A-, F1, unless UK nationalised / semi-nationalised).								
Counterparty	Sovereign	Sovereign Rating [1]	Fitch Long Term	Fitch Short Term	Exposure Limits			Capita Duration [2]
					Cash Flow	Core Fund	Combined	
ING Bank	Netherlands	AA+	A	F1	£2.6m	£2.6m	£5.2m	6 months
Nordea Bank AB	Sweden	AAA	AA-	F1+	£2.6m	£2.6m	£5.2m	12 months
Svenska Handelsbanken AB	Sweden	AAA	AA-	F1+	£2.6m	£2.6m	£5.2m	12 months
Bank of Scotland plc Group limit with BOS and Lloyds of £2.6m	UK	AA+	A+	F1	£2.6m	£2.6m	£5.2m	6 months
Barclays Bank	UK	AA+	A	F1	£2.6m	£2.6m	£5.2m	6 months
HSBC Bank plc	UK	AA+	AA-	F1+	£2.6m	£2.6m	£5.2m	12 months
Lloyds Bank plc Group limit with BOS and Lloyds of £2.6m	UK	AA+	A+	F1	£2.6m	£2.6m	£5.2m	6 months
Santander UK plc	UK	AA+	A	F1	£2.6m	£2.6m	£5.2m	6 months
Standard Chartered Bank	UK	AA+	AA-	F1+	£2.6m	£2.6m	£5.2m	6 months
Nationwide Building Society	UK	AA+	A	F1	£2.6m	£2.6m	£5.2m	6 months
National Westminster Bank plc [3] Group limit with Nat West and RBS of £3.3m	UK	AA+	BBB+	F2	£3.3m	£3.3m	£6.6m	12 Months
The Royal Bank of Scotland plc [3] Group limit with Nat West and RBS of £3.3m	UK	AA+	BBB+	F2	£3.3m	£3.3m	£6.6m	12 Months
UK Debt Management Office inc Treasury Bills	UK	AA+	N/A	N/A	No limit	No limit	No limit	N/A
UK Treasury - Sovereign Bonds (Gilts)	UK	AA+	N/A	N/A	N/A	£6.7m	£6.7m	N/A
UK Local Authorities	UK	AA+	N/A	N/A	£2.6m	£2.6m	£5.2m	N/A

[1] Reflects the lowest of the three rating agencies views (Fitch, Moody's and Standard and Poor's). Strategy requires sovereigns to be rated at least AA-.

[2] All deposits overnight unless otherwise approved by the Director of Finance and Transformation AND Chief Financial Services Officer. If other than overnight duration must not exceed Capita's suggested duration (Capita duration + 3 months for UK Entities up to a maximum of 12 months).

[3] UK nationalised / semi-nationalised.

Money Market Funds						
Minimum investment criteria one of AAA-mf, AAmmf or AAAm.						
Fund Name	Moody	Fitch	S&P	Exposure Limit		
				Cash Flow	Core Fund	Combined
Blackrock	AAA-mf	-	AAAm	£2.6m	£2.6m	£5.2m
BNP Paribas	-	-	AAAm	£2.6m	£2.6m	£5.2m
Goldman Sachs	AAA-mf	AAmmf	AAAm	£2.6m	£2.6m	£5.2m
Deutsche Fund	AAA-mf	-	AAAm	£2.6m	£2.6m	£5.2m
Standard Life (Ignis)	-	AAmmf	AAAm	£2.6m	£2.6m	£5.2m
Morgan Stanley	AAA-mf	AAmmf	AAAm	£2.6m	£2.6m	£5.2m
Prime Rate	-	AAmmf	AAAm	£2.6m	£2.6m	£5.2m
Insight	-	AAmmf	AAAm	£1.3m	£1.3m	£2.6m

Enhanced Cash Funds						
Minimum investment criteria AAA.						
Fund Name	Moody	Fitch	S&P	Exposure Limit		
				Cash Flow	Core Fund	Combined
Insight Liquidity Plus	-	-	AAAf /S1	£1.3m	£1.3m	£2.6m

Approved by Director of
Finance & Transformation
3rd August 2015

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Prudential and Treasury Indicators

1 Prudential Indicators	2014/15 Actual £'000	2015/16 Estimate £'000	2016/17 Estimate £'000
Capital expenditure	2,341	2,942	2,411
Ratio of financing costs to net revenue stream	-1.36%	-1.48%	-2.18%
Net borrowing requirement:			
Brought forward 1 April	nil	nil	nil
Carried forward 31 March	nil	nil	nil
In year borrowing requirement	nil	nil	nil
Capital financing requirement as at 31 March	nil	nil	nil
Annual change in capital financing requirement	nil	nil	nil
Incremental impact of capital investment decisions:			
Increase in Council Tax (Band D) per annum	£0.30	£0.24	£0.18

2 Treasury Management Indicators	2014/15 Actual £'000	2015/16 Estimate £'000	2016/17 Estimate £'000
Authorised limit for external debt:			
Borrowing	nil	5,000	5,000
Other long term liabilities	nil	nil	nil
Total	nil	5,000	5,000
Operational boundary for external debt:			
Borrowing	nil	2,000	2,000
Other long term liabilities	nil	nil	nil
Total	nil	2,000	2,000
Actual external debt	nil	nil	nil
Upper limit for fixed rate exposure over one year at year end	nil	0 – 60%	0 – 60%
Upper limit for variable rate exposure under one year at the year end	11,466 (58.9%)	40 – 100%	40 – 100%
Upper limit for total principal sums invested for over 364 days	nil (0%)	60%	60%

3 Maturity structure of new fixed rate borrowing during 2015/16	Upper limit %	Lower limit %
Under 12 months	100	nil
Over 12 months	nil	nil

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TONBRIDGE & MALLING BOROUGH COUNCIL

COUNCIL

03 November 2015

Report of the Director of Central Services and Monitoring Officer

Part 1- Public

Matters For decision

1 RECOMMENDATIONS TO COUNCIL FOLLOWING HEARING OF JOINT STANDARDS COMMITTEE ON 12 OCTOBER 2015

1.1 Introduction

- 1.1.1 On 12 October the Hearing Panel of the Joint Standards' Committee met to determine an allegation that Councillor Mike Taylor had breached the Code of Conduct of this Council.
- 1.1.2 An independent external investigator (Wilkin Chapman Solicitors) was appointed to carry out the investigation into the allegation, and their report is set out at Annex 1 to this Report. Their report concluded there had been a breach of the Code of Conduct on the grounds of (i) bullying and (ii) bringing his office or the Council into disrepute.
- 1.1.3 The Panel found that there had been a breach of the Code of Conduct in respect of obligation 3(2)(f), *"You must not conduct yourself in a manner which would reasonably be regarded as bringing your office or the Authority into disrepute."*
- 1.1.4 The Hearing Panel did not find that Councillor Taylor had breached paragraph 3(2)(a) "You must not...(a) bully any person", as the evidence before the panel was that the officers whom Councillor Taylor's behaviour was directed at did not feel bullied. The Panel noted that had the behaviour in question been directed at less senior officers then they would be very likely to have come to a different conclusion as the behaviour in question had the essence of "bullying" about it.
- 1.1.5 The full reasons for the decision are contained in the Decision Notice which is annexed to this report as Annex 2.

1.2 Sanctions

- 1.2.1 Once the Panel have found that there has been a breach of the Code of Conduct the adopted arrangements for dealing with complaints require the Panel to hear representations from the Monitoring Officer ("MO") and the Independent Person ("IP") on whether there should be any sanctions and from the MO, IP and the Subject Member on what sanctions should be imposed. The representations

made to the Panel have been recorded in paragraphs 43 to 45 of the Decision Notice and the Annex to it.

- 1.2.2 The Council's adopted arrangements for dealing with Hearings contain the range of possible sanctions which the Panel can make. These are set out at Annex 3 in paragraph 4. The Panel are not entitled to apply or recommend any other sanctions.
- 1.2.3 At the Hearing the Panel imposed the four following sanctions:
- a) Recommending to Council that Councillor Taylor be issued with a formal censure by motion (i.e. the issue of an unfavourable opinion or judgement or reprimand);
 - b) Recommending to Council that Councillor Taylor be removed from Area 2 Planning Committee until the end of April 2017;
 - c) Recommending to Council that they issue a press release; and
 - d) Publishing the Panel's findings in respect of Councillor Taylor's conduct on the Council's website.
- 1.2.4 In coming to its decision the Panel must have regard to the questions which are set out in Annex 3 at paragraph 4.4.
- 1.2.5 The full reasons for their decision on sanctions are set out in paragraph 47 of the Decision Notice.
- 1.2.6 The matters at 1.2.3 a) to c) above are expressed as recommendations to Council as a result of the adopted arrangements which require the decision on sanctions to be ratified by Council. As to 1.2.3(d), the Decision Notice has been published on the Council's website.
- 1.3 Legal Implications**
- 1.3.1 The Panel have determined that there was a breach of the TMBC Code of Conduct by Councillor Taylor. There is no right of appeal against that decision.
- 1.3.2 Council must consider the sanctions which the Panel imposed and should have regard to their reasoning and whether the sanctions are fair and proportionate and in line with the adopted arrangements at annex 4.
- 1.3.3 As Council will be confirming whether sanctions a) – c) above should be imposed it must also consider whether Councillor Taylor's right to freedom of expression, enshrined in Article 10 of the European Convention on Human Rights, will be interfered with. The representations of the Deputy Monitoring Officer to the Hearing Panel (which are attached to the decision notice) on this point are sound legal advice for Council to consider and the reasoning of the Panel on this point is at paragraph 47.6.3 of the Decision Notice.

1.4 Financial and Value for Money Considerations

1.4.1 The investigation in to this matter has been very thorough. It involved the appointment of external investigators, in the interests of ensuring an independent investigation. The total cost of their appointment (which was to cover this investigation plus another unrelated matter) was £11,100.

1.5 Recommendation

1.5.1 Council are requested to consider the recommendations of the Hearing Panel at paragraph 1.2.3. a) – c) above.

Background papers:

Nil

contact: Lynn Francis
Kevin Toogood

Adrian Stanfield
Director of Central Services and Monitoring Officer

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**Tonbridge & Malling
Borough Council**

Case reference:

Report of an investigation by Jonathan Goolden, appointed by the Deputy Monitoring Officer for Tonbridge & Malling Borough Council, into allegations concerning Councillor Mike Taylor of that Council.

10th April 2015

VOLUME 1 REPORT

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Volume 2 Schedule of evidence taken into account and list of unused material

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1. Executive Summary

- 1.1 Councillor Taylor is an elected member of Tonbridge & Malling Borough Council and Borough Green Parish Council.
- 1.2 Since 2007, Councillor Taylor has taken significant interest in a planning matter at Isles Quarry West, a site that was within his Ward. Councillor Taylor had expressed concerns about the designation of Isles Quarry West as a development site and during 2013-14 about matters relating to the subsequent planning permission on the site.
- 1.3 During May and June 2014 Councillor Taylor sent numerous emails to Officers of the Council about the development at Isles Quarry West. Some of those emails contained comments which caused concern to the Officers. Councillor Taylor also posted information on a public website that repeated the comments which had caused concern.
- 1.4 Councillor Taylor was invited to a meeting with Senior Officers of the Council to discuss his behaviour and the concerns raised by the content of some of his emails and his website. Following the meeting Councillor Taylor referred himself for investigation.
- 1.5 I have considered whether Councillor Taylor was acting in an official capacity when he sent the emails and made the website postings. I am satisfied for the detailed reasons set out in this report that Councillor Taylor was acting in an official capacity.
- 1.6 I have considered whether the content of the emails could reasonably be considered as likely to bring the authority into disrepute. I consider that comments in the emails and on the website are derogatory of some Senior Officers of the Council and that it was unwise and unnecessary for these comments to be published in such a public manner.
- 1.7 I have concluded that it would be reasonable to believe that it was likely that the comments could diminish the repute of the Council and therefore might bring the authority in to disrepute.
- 1.8 I have considered whether any of the comments made by Councillor Taylor could be construed as bullying. I am mindful that Councillor Taylor is a Member of the Borough Council that employs the Officers who have been the subject of his comments and therefore has an influence over their employment. I consider that some of Councillor Taylor's comments were designed to humiliate and intimidate Officers of the Council and therefore could be considered to be acts of bullying
- 1.9 My finding is that there has been a breach of the code of conduct of the authority concerned by Councillor Taylor.

2. Councillor Taylor's official details

- 2.1 Councillor Taylor is a member of Tonbridge and Malling Borough Council having been elected in January 2014.
- 2.2 Borough Green Parish Council co-opted Councillor Taylor to that Council in the year 2000, and he continued to serve until 2003.
- 2.3 In 2009 he was elected as a member of Borough Green Parish Council, and re-elected in 2011.
- 2.4 He became Chairman of the Parish Council in 2011, and remains in that position.

3. Relevant legislation and protocols

3.1 Section 27 of the Localism Act 2011 (the Act) provides that a relevant authority (of which Tonbridge and Malling Borough Council is one) must promote and maintain high standards of conduct by members and co-opted members of the Council. In discharging this duty, the Council must adopt a code dealing with the conduct that is expected of members when they are acting in that capacity.

3.2 Section 28 of the Act provides that the Council must secure that its code of conduct is, when viewed as a whole, consistent with the following principles:-

- (a) Selflessness;
- (b) Integrity;
- (c) Objectivity;
- (d) Accountability;
- (e) Openness;
- (f) Honesty;
- (g) Leadership.

3.3 The Council has adopted the Kent Code of Conduct for Members (attached at JTG 1) in which the following paragraphs are included:-

Preamble

.....

(B) The Code is based on the Seven principles of Public Life under section 28(1) of the Localism Act, which are set out in Annexe 1.

(C) This Preamble and Annex 1 do not form part of the Code, but you should have regard to them as they will help you to comply with the Code.

.....

Scope

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

.....

General obligations

3.

(2) *You must not:*

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(a) *bully any person;*

.....

(f) *conduct yourself in a manner which could reasonably be regarded as bringing your office or the Authority into disrepute;“*

.....

Annex 1

THE SEVEN PRINCIPLES OF PUBLIC LIFE

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

.....

INTEGRITY

.....You should value your colleagues and staff and engage with them in an appropriate manner and one that underpins the mutual respect that is essential to good local government. You should treat people with respect, including the organisations and public you engage with and those you work alongside.

4. Evidence and facts

My appointment

- 4.1 After consulting the appointed Independent Persons the Assessment Panel of the Council's Standards Committee referred the matter to Mr K Toogood, the Council's Deputy Monitoring Officer, for investigation.
- 4.2 Mr Toogood nominated me to perform his investigatory functions as a Monitoring Officer in respect of this matter.
- 4.3 I hold a Bachelor of Arts in Law degree from the University of Sheffield. I am a solicitor and an accredited mediator. I was employed by various local authorities as a solicitor for a period of 14 years and have held the position of Monitoring Officer in two authorities for six years. I practice law as a solicitor and am a partner with Wilkin Chapman LLP. I have carried out over 200 investigations of members of local authorities and other public bodies.
- 4.4 I was assisted in the conduct of the investigation by Martin Dolton. Mr Dolton is a retired senior police officer who through his 30 years of police service conducted many sensitive police misconduct investigations. He holds a Bachelor of Science Honours degree in Public Policy and Management awarded by the Department of Local Government Studies at Birmingham University. He has been an associate investigator for the Standards Board for England. With this firm, its predecessor and the Standards Board for England. He has conducted numerous investigations into alleged breaches of the Code of Conduct of Councillors and discipline enquiries concerning senior staff in local government. He was a full time Town Clerk and Responsible Financial Officer of a large town council for 3 years.
- 4.5 I was also assisted in the drafting of this report by Alan Tasker. Mr Tasker is a former Monitoring Officer and was the Clerk to a large town council. He has significant experience of code of conduct investigations.

The investigation

- 4.6 During the investigation Mr Dolton held face to face meetings with, and obtained signed statements from:-
- Julie Beilby – Chief Executive of the Council (signed statement obtained 23 October 2014)
 - Adrian Stanfield – Director of Central Services and Monitoring Officer at the Council (signed statement obtained 13 October 2014)
 - Steve Humphrey – Director of Planning, Housing and Environmental Health at the Council (signed statement obtained 15 October 2014)
 - Lindsay Pearson – Chief Planning Officer at the Council (signed statement obtained 21 October 2014)
- 4.7 Mr Dolton conducted a face to face audio recorded interview with Councillor Taylor on 24 October 2014 from which a transcript was prepared. Councillor Taylor was given an opportunity to comment on the transcript of the interview and returned a signed copy to indicate his agreement with its contents on 15 November 2014.

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- 4.8 Copies of the above, together with other relevant documents are annexed to this report and listed in a schedule of evidence. Copies of the various emails which are referred to by witnesses are set out in date order in a separate schedule at JTG 10 for ease of reference.
- 4.9 I wish to record my thanks and those of Mr Dolton for the co-operation and courtesy shown to us by all those we had cause to contact during the investigation.

Background

- 4.10 For a number of years Councillor Taylor has taken an interest in the planning status of an area within the Parish of Borough Green known as Isles Quarry.
- 4.11 Since the Council commenced a review of its Local Plan in 2003, Isles Quarry has been the subject of consideration and consultation. This continued under the development of the Local Development Framework. This process included public consultation and public examination leading to the adoption by the Council of the Core Strategy and Development Land Allocation. As a result, Isles Quarry was removed from the Green Belt and identified as a strategic development site.
- 4.12 Councillor Taylor has consistently opposed this designation for Isles Quarry.
- 4.13 In June 2013 planning permission was granted for the residential development of Isles Quarry.
- 4.14 In January 2014 Councillor Taylor was elected to the Council to represent the Borough Green and Long Mill ward which included the Isles Quarry site. Since his election Councillor Taylor has made numerous Freedom of Information requests for documents relating to the planning permission for the site. Councillor Taylor has also made public his concerns about aspects of the development on the site, how his requests for information were being dealt with and the conduct of Officers of the Council. His comments have been posted on an internet website.
- 4.15 Councillor Taylor's conduct in this matter caused concern for the Officers of the Council, including the Council's Monitoring Officer. Because of these concerns Councillor Taylor was invited to a meeting with the Monitoring Officer and Chief Executive to discuss Councillor Taylor's conduct. A comprehensive note of the meeting taken by Adrian Stanfield is attached at JTG 2.
- 4.16 Following the meeting Councillor Taylor decided to refer himself to the Monitoring Officer by e-mail (set out in the paragraph below) as it appeared to him that others considered his conduct to be in breach of the Council's Code of Conduct. Though unusual, I am satisfied that such self referral was capable of amounting to a written allegation within the meaning of section 28(9) of the Act and thus one which fell to be considered under the Council's arrangements for investigating and deciding on such matters.

Complaint

- 4.17 In an email dated 8 July 2014, sent to an extensive number of individuals and copied to the Council's Monitoring Officer, Chief Executive and others, Councillor Taylor stated:-

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'At a recent meeting with Julie Beilby and Adrian Stanfield it was alleged that I had committed serious breaches of the Standards Code regarding "lack of respect and inappropriate comments and language to Council Officers", specifically Steve Humphrey and Lindsay Pearson.

Whilst I clearly take a different view, after some thought I realised that the code is more important than individual beliefs, and that justice must be seen to be done.

As a responsible Member of this Authority, I am therefore formally reporting myself to the Monitoring Officer for the alleged breaches of the Standards Code.'

- 4.18 The Council's code does not contain an explicit requirement to treat others with respect. In this report, I have considered whether or not Councillor Taylor may have failed to follow elements of the Council's Code relating to bullying and disrepute.
- 4.19 In an e-mail dated 7 April 2015 sent to Mr Toogood, Mr Stanfield, Ms Beilby, Mr Dolton and me, Councillor Taylor questioned my reference in the draft version of this report to bullying, indicating that he had referred his lack of respect for officers. He considered that the complaint could not be expanded to cover bullying.
- 4.20 Whether an investigating officer may consider elements of the Code not identified by the complainant is a matter which has been considered by the former Adjudication Panel for England and its successor, the First Tier Tribunal General Regulatory Chamber (Local Government Standards in England). Both tribunals existed as a function of the statutory standards framework which was removed by the Localism Act 2011. However, in the absence of other relevant statutory provision, case law or provision in the Council's arrangements for the consideration of complaints, I consider that the tribunal decisions indicate the proper approach to be taken.
- 4.21 In *Bartlett, Milton Keynes Council* (2008) APE 0401, the tribunal found that the original complaint did not fix the scope of the investigation – it is simply the initiating act. The tribunal found that it was legitimate for the investigating officer to ultimately allege a breach of the Code not identified by the complainant.
- 4.22 In *Rayment, Hampshire Police Authority* (2010) LGS/2010/0479, the appellant raised a procedural issue about the ability of the investigator appointed by the Deputy Monitoring Officer to consider additional potential breaches of the Code, beyond the breach they were originally charged with investigating. The appellant queried whether the investigator, on finding that another part of the Code may have been breached, should have referred the matter back to the Deputy Monitoring Officer. The tribunal found that it was entirely proper for the investigator to consider, based on the facts of the allegation, whether more than one breach had occurred. What the person investigating the case was required to do was to decide whether on the facts that underlay the allegation there was a breach or breaches of the Code. One set of facts can, and often does, involve more than one breach of the Code.

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- 4.23 Councillor Taylor's e-mail of 8 July 2014 referred to allegations regarding "lack of respect and inappropriate comments and language to Council Officers". This refers to alleged behaviour rather than a specific provision of the Code. It is for the investigating officer to determine what areas of the Code might be relevant to the conduct referred for investigation.

Julie Beilby

- 4.24 Mr Dolton conducted an interview with Julie Beilby, which resulted in the signed statement attached at JTG 3.
- 4.25 Ms Beilby is the Chief Executive and Head of Paid Service of the Borough Council, a position she had held since February 2103. Prior to that she was Central Services Director from January 2009 and had been employed by the Council since 1984.
- 4.26 She first became aware of Isles Quarry in 2010 through local Members and Councillor Taylor in his capacity as a Parish Councillor. Through meetings, discussions and emails she had seen a continuous theme to the position adopted by Councillor Taylor in relation to the development of Isles Quarry.
- 4.27 It was clear that Councillor Taylor held a personal belief that there were flaws in the process leading to the allocation of Isles Quarry. Councillor Taylor had repeatedly articulated his belief that there had been lies and falsifying of documents. Ms Beilby stated these allegations had been investigated through a range of processes including the Borough Council's complaints procedure, the Planning Inspectorate and Kent Police. None of these complaints had been upheld.
- 4.28 She had no doubt that Councillor Taylor believed the allegations he had made and that he was entitled to challenge, question, debate and criticise and to express these views within the code of conduct. That is with respect to individual officers and the organisation's reputation.
- 4.29 Ms Beilby stated that Officers had consistently treated Councillor Taylor's requests for information in a polite and respectful manner and in a timely fashion.
- 4.30 She believed Councillor Taylor had shown commitment to his residents by asking challenging questions. She also believed that Councillor Taylor had shown disrespect to individual officers that was neither acceptable nor justified. She provided examples in respect of three individuals. These examples included inappropriate language and unproven allegations distributed to a wide audience through his own website and extensive distribution of emails from his personal email account expressing his own views but 'badged' as Parish Council views.
- 4.31 First, on 14 June 2014 Councillor Taylor sent an email to all members of the Borough Council with the subject matter "Adrian Stanfield" (enclosed at JTG 10 **email 6** in the email schedule). Mr Stanfield is the Director of Central Services and Monitoring Officer, he is the most senior qualified Solicitor employed by the Council. In the email Councillor Taylor made a clear accusation that Mr Stanfield had deliberately set out to mislead Members. Ms Beilby stated that she knew Mr Stanfield acted in a manner consistent with his professional role and ethics and in accordance with the Council's Code of Conduct for Officers. To suggest Senior Officers deliberately misled was reputationally damaging.

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- 4.32 In a further email sent on 18 June 2014, copied to all Members of the Council, (enclosed at JTG 10 **email 10** in the email schedule) Councillor Taylor questioned Mr Stanfield's role stating *"I cannot understand how you have countenanced and condoned withholding information."* Ms Beilby believed this to be a clear accusation that Mr Stanfield had condoned an unlawful act, this being potentially damaging to his reputation on a personal and professional level and also to the Borough Council.
- 4.33 Julie Beilby explained why she asked for Counsel's opinion. Councillor Taylor was making accusations about the way the Council had dealt with issues of contamination at Isles Quarry. These were clearly visible on the Borough Green News website and widely available to Members, other agencies, the press and public. She considered that whilst Councillor Taylor had his own beliefs it was right and proper that the Council took the reputational issues seriously and hence the balance and check of Counsel's Opinion to establish and provide confidence in the process and share that with others.
- 4.34 The second example of an Officer to receive an inappropriate email was Lindsay Pearson, the Council's Chief Planning Officer. On 20 May 2014 Councillor Taylor sent Mr Pearson an email which was also sent to Steve Humphrey and copied to others (enclosed at JTG 10 **email 2** in the email schedule)
- 4.35 In the email Councillor Taylor stated *"Hiding and withholding this information merely reinforces my case that something dodgy is happening, and that you are covering it up"*. Julie Beilby stated this was a clear accusation that Mr Pearson was withholding information, an accusation that was damaging to Lindsay Pearson and by implication to the Council.
- 4.36 Councillor Taylor sent a further email to Lindsay on 12 June 2014 (enclosed at JTG 10 **email 4** in the email schedule) this was copied to a wide audience including Parish Councillors, Crest and the Environment Agency. The email contained accusations in relation to Mr Pearson as an individual and to the Planning Department, in relation to Mr Pearson it stated:

"What angers me most is the Obstruction Report was wilfully omitted by you.."

and in relation to the Planning Department it stated:

"It is now perfectly clear that the Planning Department has waged a concerted campaign of misinformation, lies, deception and unnecessary secrecy. You have deliberately withheld information, the secrecy endemic is not acceptable "

- 4.37 Ms Beilby stated this was potentially damaging to the reputation of the Planning Department and thus by implication to the Council.
- 4.38 The third example of an Officer to be subject to comment by Councillor Taylor was Steve Humphrey, the Director of Housing, Planning and Environmental Health. In an extract from the Borough Green News website (attached at JTG 4) Councillor Taylor wrote;

"My personal belief is that the contamination has been buried on site, and I do not know if that can be deemed as safe – we have been assured repeatedly over many years by TMBC that contamination will

CONFIDENTIAL FINAL REPORT

be dealt with appropriately, and despite all our efforts they have failed us. I hold Steve Humphrey and Lindsay Pearson directly responsible for this almost criminal behaviour, and will seek to have action taken against them and Crest Nicholson unless matters are addressed forthwith”.

- 4.39 Ms Beilby stated there was potential reputational damage to individuals in making such statements, albeit that “almost criminal behaviour” had little meaning, it did portray inappropriate behaviour by two senior officers of the Council, and was therefore by implication damaging to the reputation of the Council.
- 4.40 Ms Beilby was concerned about the damage to the reputation of the Council and some Senior Officers and to the demoralising effect such comments were having on the Planning Service. The widespread dissemination of the unproven allegations to Members of the Parish and Borough Council, the residents via the website and other agencies via email was of reputational concern to her as Chief Executive of the Council.
- 4.41 She stated the Council had a history of open communication with Members so, with Mr Stanfield as Monitoring Officer, they decided to invite Councillor Taylor to an informal meeting to discuss his language and behaviour. The minutes of the meeting recorded a number of concerns which Councillor Taylor did not agree. Councillor Taylor justified his behaviour, referring to his long held views of the Parish Plan process and adoption of the core strategy.
- 4.42 Ms Beilby pointed out that the Council was generally held in high regard exemplified by a track record of high performance under the Comprehensive Performance Assessment inspections and more recently the low record of complaints referred to the Local Government Ombudsman. A Peer Review report completed in early 2014 commented on the positive relationships.
- 4.43 Ms Beilby concluded by stating that in her opinion Councillor Taylor had taken actions that were potentially damaging to the Council and individual officers without any proven justification.

Adrian Stanfield

- 4.44 Mr Dolton conducted an interview with Adrian Stanfield, which resulted in the signed statement attached at JTG 5.
- 4.45 Mr Stanfield was the Director of Central Services and Monitoring Officer of the Council, a position he had held since February 2013. Prior to that he was the Chief Solicitor and Monitoring Officer from May 2011. Mr Stanfield was a qualified Solicitor and had been employed in local government legal practice since October 1996 and had worked at 5 different local authorities.
- 4.46 Mr Stanfield stated that the matters in his statement were true to the best of his knowledge and belief and were derived from his own knowledge and from the inspection of emails and files held by the Council.
- 4.47 He confirmed that Councillor Taylor was elected as an Independent Member to the Council in January 2104 as one of three members for the Borough Green and Longmill Ward. Councillor Taylor was also the Chairman of Borough Green Parish Council.

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- 4.48 Mr Stanfield recorded that Councillor Taylor ran a local news website under the name of 'Borough Green News'
- 4.49 He explained that within the Council's area and in the Borough Green and Longmill Ward was land at Isles Quarry West referred to as "Isles Quarry". He had been aware of Isles Quarry since 2010, since when he had been in correspondence with Councillor Taylor on numerous occasions. Throughout his dealings with Councillor Taylor the overwhelming majority of communication had concerned Isles Quarry.
- 4.50 Mr Stanfield set out a brief history of Isles Quarry since it was identified as a strategic site for housing in September 2007 and was included in the Development Land Allocation DPD adopted in April 2008. The Core Strategy had been subject to a Public Examination in 2007 at which Councillor Taylor appeared as a witness opposing development at Isles Quarry. The Inspector concluded that the Core Strategy was sound.
- 4.51 Mr Stanfield explained that for a number of years Councillor Taylor believed that the Core Strategy and the allocation of Isles Quarry for development was flawed. Councillor Taylor had pursued complaints about the process saying the Council had been untruthful about events that unfolded at the Examination in Public. These complaints had been pursued through various channels including the Council, the Local Government Ombudsman, the Planning Inspectorate and Kent Police. Mr Stanfield was not aware of any of these bodies upholding Councillor Taylor's complaints.
- 4.52 Mr Stanfield stated that in June 2011 he and Steve Humphrey prepared a briefing note for Members on Isles Quarry, the Borough Green Parish Plan and their relationship with the Local Development Framework. This note included a chronology of the Isles Quarry designation and Councillor Taylor's complaints (attached at JTG 6).
- 4.53 In June 2013 planning permission was granted by the Council for the erection of 177 dwellings, the creation of 6.82 hectares of public open space, a new vehicular access and access roads, footpaths, landscaping and associated infrastructure at Isles Quarry. On 14 November 2014 Councillor Taylor emailed Mr Humphrey, Mr Pearson and Mr Stanfield to raise concerns that development had commenced without the discharge of various conditions relating to ground water and contamination. Since then Councillor Taylor had made numerous complaints about compliance by the developer and the Council's role in monitoring and enforcing the conditions. Councillor Taylor had also made a number of complaints about the supply of information to him in connection with the issue.
- 4.54 Mr Stanfield pointed out it was legitimate for a Member to raise concerns about the implementation of development within their ward. However, the tone of Councillor Taylor's correspondence became increasingly personal and accusatory and these personal accusations were circulated to a wide audience including other Members of the Council, Borough Green Parish Councillors, and third parties such as Crest and the Environment Agency. Mr Stanfield believed there was a clear distinction between legitimate issues for consideration and the manner and tone in which it is pursued. From his discussions with Councillor Taylor it was apparent Councillor Taylor saw no such distinction.

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4.55 During May and June 2014, Mr Stanfield was copied into numerous email exchanges with Councillor Taylor relating to Isles Quarry from which it was clear to him the personal attacks by Councillor Taylor were becoming increasingly frequent. A number of examples were referred to:

- (a) Email dated 20 May 2014 (enclosed at JTG 10, **email 2** in the email schedule)

Councillor Taylor directed various allegations at the Planning Department and Lindsay Pearson. The email was copied to a large number of recipients including all Members of Borough Green Parish Council.

In the final paragraph Councillor Taylor stated:

"I realise Planners still don't really understand the concept of transparency, but surely you can see that the longer you withhold information, the less credibility it has. Whilst contemporaneous notes can still be 'fudged', they have a truth they don't have weeks later when eventually dragged into the light. This whole fiasco could have been averted had planners simply kept us up to date, as is our right. I am sure Martin is duly angry at yet another expensive FOI, but I have been forced to use them as a last resort to obtain withheld information. Hiding and with-holding this information merely reinforces my case that something dodgy is happening, and that you are covering it up."

- (b) Email dated 30 May 2014 (enclosed at JTG 10 **email 3** in the email schedule)

Councillor Taylor accused the Council Leader, Chief Planning Officer, Director of Planning, Housing and Environmental Health, Chief Executive and Mr Stanfield of *"breaking the law"*. The email was copied to a large number of recipients including Jennifer Wilson of the Environment Agency.

Later in the email Councillor Taylor stated:

"I am fairly secure, the websites are hosted overseas so cannot be reached by the British Courts, your Standards System does not have sanctions available, legal action against me would be welcome, but fruitless – I have no assets; and a cyber attack against the sites would definitely result in a media storm".

- (c) Email dated 12 June 2014 (enclosed at JTG 10 **email 4** in the email schedule)

Councillor Taylor made allegations about the conduct of Lindsay Pearson and the Planning Department. The email was copied to a large number of recipients including Members of Borough Green Parish Council, Russell Dawkins of Crest and Jennifer Wilson of the Environment Agency. In the email Councillor Taylor made the following allegations:

"What angers me most is that the Obstruction Report was wilfully omitted from the FOI documents, by you."

"It is now perfectly clear that the Planning Department has waged a concerted campaign of misinformation, lies, deception and unnecessary secrecy. You have deliberately withheld information"

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“The secrecy endemic in your department is not acceptable in this day and age”

- 4.56 On 13 June 2014 Mr Stanfield wrote to Councillor Taylor, his fellow ward colleagues, the Clerk to Borough Green Parish Council and others to set out a summary of Counsel’s advice which had been sought in view of allegations made by Councillor Taylor. Councillor Taylor immediately responded to that email with an email (enclosed at JTG 10 **email 5** in the email schedule), which was copied to all Members of Borough Green Paris Council, that commenced:

“My first response to your email began with b, and ended cks.”

And concluded:

“Time and again we have demonstrated clear evidence of ‘irregularities’ your stock response is ‘we don’t see it that way’, ‘not our responsibility’, you are misinformed’. I do accept that final failing, we are misinformed – by you..”

- 4.57 The previous email was followed the next day by an email from Councillor Taylor (enclosed at JTG 10 **email 6** in the email schedule), copied to all Members of the Council. The message was headed ‘Adrian Stanfield’ and stated:

“further to my email yesterday, I could not resist the opportunity to analyse Adrian’s email/ Counsel’s opinion in much greater detail, but I am afraid it is intended to mislead rather than inform.”

Mr Stanfield found this unacceptable as it inferred he was attempting to mislead Members of the Council.

- 4.58 Mr Stanfield stated that Councillor Taylor had also posted his thoughts on Counsel’s opinion on the Borough Green News website, in addition to publishing Mr Stanfield’s email the following statement was posted:

“UPDATE: in a most interesting development, I received this letter from DCLG, Eric Pickles office, that seems to support our view that T&MBC should be doing more to keep us informed about IQW. Completely unconnected, of course, I then receive this email from T&M’s Solicitor, Adrian Stanfield, he seems worried that he has taken Counsel’s advice to try and prove T&M are obeying the rules. Ever suspicious, I asked to see what question Adrian asked to get such a biased answer...Watch this space!!! (Adrian Stanfield’s email without highlighting). Adrian has wasted £1625 of OUR money obtaining a flawed opinion, because he biased the question!!!”

- 4.59 Mr Stanfield stated he then received an email from Councillor Taylor on 18 June 2014 (enclosed at JTG 10 **email 10** in the email schedule) which was copied to all Members of Borough Green Parish Council. In the email Councillor Taylor suggested that the instructions to Counsel were biased and the opinion that resulted was ‘manipulated’. Mr Stanfield found one paragraph of the email particularly offensive as Councillor Taylor sought to impugn his integrity by accusing him directly of condoning an alleged unlawful act. The paragraph stated:

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"I must also question your role in this affair, Adrian as someone whose duty is to advise the Council how to comply with the Law and the Council's own rules, I cannot understand how you have countenanced and condoned the withholding of information. Before you say that priorities and work load prevented 'immediate responses', Lindsay and Steve could have used the many pages lecturing me on why I was wrong, simply to click 'forward' and release the information"

- 4.60 Mr Stanfield stated that in the event he had already composed an email to Councillor Taylor to express concern about Councillor Taylor's continued accusations against officers. On the same day, 18 June 2014, Mr Stanfield, in his capacity as Monitoring Officer and the officer with responsibility for Information Rights, emailed Councillor Taylor (enclosed at JTG 10 **email 8** in the email schedule) setting out his concerns, as the statutory officer responsible for ethical standards, regarding Councillor Taylor's unfounded personal attacks on officers. He invited Councillor Taylor to meet with him and the Chief Executive.
- 4.61 Mr Stanfield considered the request for a meeting with Councillor Taylor appropriate. He stated he could have pursued a formal complaint against Councillor Taylor under the Code of Conduct but did not consider that course of action would have been constructive. Mr Stanfield preferred to raise his concerns with Councillor Taylor as he would with any other councillor.
- 4.62 Mr Stanfield stated it was his experience that there was a positive relationship between members and officers at the Council. This relationship was underpinned by mutual trust, respect and courtesy with any differences of opinion between officer's professional advice and Members' opinion being resolved in an amicable and professional manner.
- 4.63 Mr Stanfield stated that Councillor Taylor agreed to meet with him and the Chief Executive although in doing so Councillor Taylor continued to make accusations against officers of the Council. In an email to Mr Stanfield dated 18 June 2014 Councillor Taylor stated (enclosed at JTG 10 **email 10** in the email schedule) *"I have clear evidence of lies involving many senior officers"*. The email was copied to all Members of the Council.
- 4.64 On 25 June 2104 Councillor Taylor emailed a Senior Planning Officer, Glenda Egerton, (enclosed at JTG 10 **email 12** in the email schedule) in reply to her email earlier the same day in which she indicated that a copy of the Obstruction Survey was to be put in the post. In his email Councillor Taylor stated:

*"Dear Glenda
Very much appreciate, but do not bother. I already have the emailed pdf, and had an A2 printed yesterday. Save the postage and put it towards Adrian's collection to pay back the £1625 he paid for the flawed Opinion.
Regards
Mike"*

- 4.65 Mr Stanfield, together with the Chief Executive, met with Councillor Taylor on 27 June 2014. Also present were Councillor Mrs Kemp, Chairman of Area 2 Planning Committee, Pat Darby, Chairman of Platt Parish Council and Janet Shenton, a Committee Administrator.

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- 4.66 Mr Stanfield stated that the 27 June meeting was not the only time he had met with Councillor Taylor since Councillor Taylor had been elected to the Council. An earlier meeting on 6 March 2014 had been to provide training for Councillor Taylor on predetermination and bias as Councillor Taylor had not been a Member when general training was provided. The Deputy Monitoring Officer was also present at this meeting. A further meeting was held on 9 May when Steve Humphrey was also present.
- 4.67 At this meeting Councillor Taylor presented Mr Humphrey with a copy of the 2014 Supplementary Parish Plan approved by Borough Green Parish Council. Councillor Taylor's concerns relating to compliance with conditions by Crest and legal advice taken by Borough Green Parish Council regarding the adoption of the Core Strategy were discussed. Mr Stanfield recalled that Councillor Taylor sought an apology from the Council for the irregularities he believed had occurred in the past. Mr Stanfield declined to give such apology. Mr Stanfield recalled saying to Councillor Taylor that he found his personal attacks on officers in his correspondence to be unacceptable, Councillor Taylor offered no apology in response.
- 4.68 Following the meeting of 9 May Mr Stanfield was copied into two items of correspondence from Councillor Taylor.
- 4.69 Mr Stanfield stated that on 30 June 2014 he observed a post on the Borough Green News website relating to the meeting with Councillor Taylor. Mr Stanfield found the post to be unacceptable in a number of respects. In the post an entire paragraph was devoted to assessing Mr Stanfield's competence as a Solicitor and accused him of using '*devious little tricks*' and concluded by saying '*in future I will not meet him without a witness present, I am too trusting by far!!*' Mr Stanfield regarded these comments as wholly unacceptable and offensive and a direct personal attack which impugned his integrity as a Solicitor of the Senior Courts.
- 4.70 Mr Stanfield stated that the post also included a 'report' of the meeting of 27 June which was not the agreed version of the minutes which later appeared on the website but rather Councillor Taylor's own account of the meeting. The link to the report was prefaced by the comment:
- "I answered a summons to appear Friday before T&MBC's Chief Exec, Solicitor and Director of Planning. They thought it was for them to read me the riot act about my 'lack of respect' for Planning Officers. Yes THOSE Planning Officers, the ones who have been misleading and lying to us for the past 7 years"*
- 4.71 The post was later amended to add the following to the end "*So sad Steve couldn't make the meeting!*" Mr Stanfield took this to be a sarcastic comment about Mr Humphrey not being present.
- 4.72 Mr Stanfield concluded by stating that in his view Councillor Taylor's conduct had fallen below that expected of someone holding public office. Councillor Taylor had made a number of unjustified and provocative personal attacks on officers, and in doing so had copied these to a wide audience including publication on a website. The publication of such attacks only compounded their provocative and offensive nature.

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Steve Humphrey

- 4.73 Mr Dolton conducted an interview with Steve Humphrey, which resulted in the signed statement attached at JTG 7.
- 4.74 Mr Humphrey is the Director of Planning, Housing and Environmental Health at the Council and had been a Director at the Council for 11 years. He is a member of the Corporate Management team with responsibility for a range of functions including the Council's town and country planning function. He is a Chartered Town Planner.
- 4.75 Mr Humphrey stated that in 2007 the site known as Isles Quarry West was identified for housing in the Council's Local Development Framework Core Strategy. The site was allocated to contribute towards meeting the housing need, including affordable homes, in the western part of the Borough. The site constituted previously developed land and was in accordance with the policy to make best use of 'brownfield' land.
- 4.76 In June 2011 a planning application for residential development on the site was submitted. Planning permission was granted in June 2013 subject to conditions covering many technical matters, one of these conditions required the submission and approval of a remediation strategy to deal with contaminated land. The condition used by the Council reflected previous 'model' conditions and followed convention and practice by planning authorities.
- 4.77 Mr Humphrey stated that as far as he was aware Councillor Taylor's involvement with Isles Quarry West stemmed from the mid 2000's as a Borough Green Parish Councillor during consideration of the site in the Local Development Framework process. He believed Councillor Taylor may have previously had personal association with the site over a much longer period. Councillor Taylor had expressed misgivings about how the site was referred to in the Borough Green Parish Plan and of irregularities he believed were in the final presentation of that Plan. Mr Humphrey understood Councillor Taylor felt that the LDF process and the Planning Inspector's decision was improperly influenced by that. His own view was that the Planning Inspector arrived at her judgement taking all planning matters into account and, whatever the circumstances with the Parish Plan, her decision was sound and properly made. There had been formal investigations into Councillor Taylor's concerns by various agencies all of which had concluded that no further action was warranted. As recently as September 2014 Councillor Taylor had sought an apology from the Council over the alleged irregularities in the process.
- 4.78 Mr Humphrey stated that more latterly Councillor Taylor had focussed his attention on various issues to do with the implementation of the development at Isles Quarry West with particular concern about land remediation. These matters were legitimate planning matters and, as far as Mr Humphrey was aware, were raised with good intentions. Mr Humphrey stated this aspect of Councillor Taylor's role as a Local Member providing his local observations had been helpful and constructive. However, on the issue of land remediation it seemed to Mr Humphrey that Councillor Taylor had not been able to accept the role of the Council as opposed to the responsibility of the developer, something Councillor Taylor had been advised on, on many occasions.

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- 4.79 Mr Humphrey explained that aspects of the planning system could be misunderstood. This could become very frustrating to those with strongly held views. Officers involved in the planning system came across this from time to time and were generally well practiced in dealing with the situation. Mr Humphrey said that this was his perspective of the situation here.
- 4.80 Mr Humphrey stated that as well as displaying frustrations Councillor Taylor's approach appeared to also be based on a belief that a number of Council Officers had conspired to mislead him or withhold information on the subject of remediation. This had led to accusations from Councillor Taylor in communications between him and officers which had been copied to others outside the Council. Mr Humphrey was concerned that the reputation of the Council and the planning service had been unjustly harmed.
- 4.81 Mr Humphrey stated that Council Officers had tried on many occasions to reassure Councillor Taylor on the approach to land remediation. This included taking advice of Counsel although this had not appeared to satisfy Councillor Taylor on the appropriateness of the Council's approach. Mr Humphrey said many meetings had taken place between Officers and Councillor Taylor where the issue was addressed. He referred to a meeting on 9 May which he recalled was to review progress and consider more constructive dialogue. This did not seem to move matters forward demonstrated by the content of an email from Councillor Taylor later that day (enclosed at JTG 10 **email 1** in the email schedule).
- 4.82 Mr Humphrey explained that the development at Isles Quarry West was well underway and that there was continuing dialogue with the developer about various matters including progress on land remediation. This had included a meeting between Council Officers, representatives from Crest Nicholson and Councillor Taylor where a number of initiatives were agreed to provide Councillor Taylor with assurances about progress. These included programmed visits to the site by Councillor Taylor designed to replace his unauthorised and unaccompanied visits. Crest also agreed to the appointment of an independent consultant in addition to their own professional advisors. These matters were not a requirement of the planning permission but were seen as helpful by the developer in order to demonstrate good practice.
- 4.83 Mr Humphrey explained he was making these points for two contextual reasons. First, to emphasise that significant attention had been given to the issues raised by Councillor Taylor and second, that there was some way to go on the development and the process of validation of the remediation strategy. Mr Humphrey said Officers from his department including Lindsay Pearson, Glenda Egerton and Kirstie Parr continued to liaise with the developer and the Environment Agency to ensure works progressed in accordance with the planning permission.
- 4.84 Mr Humphrey stated that the approach by Councillor Taylor had not been appropriate for an elected Member of the Council insofar as unfounded allegations had been made irrespective of the rational explanations provided.
- 4.85 Mr Humphrey acknowledged that the substantive matters raised by Councillor Taylor were legitimate and that he understood Councillor Taylor's desire to pursue them. Mr Humphrey recognised the frustrations of the planning system and that these could give rise to tension and disagreement.

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4.86 Where Mr Humphrey did take a more serious view was in the detail of particular contact Councillor Taylor had made. Mr Humphrey provided examples of emails from Councillor Taylor dated 12 June 2014 timed at 5.59 (enclosed at JTG 10 **email 4** in the email schedule) and 4 July 2014 timed at 4.20 (enclosed at JTG 10 **email 13** in the email schedule). He considered Councillor Taylor's comments, directed at Lindsay Pearson but copied to others to be beyond the limit which he would consider acceptable conduct between Members and Officers of the Council. Mr Humphrey considered this to be particularly so in the context of the general Member/Officer relationship at the Council that he had found to be excellent and respectful even on the infrequent occasions when differing views arose.

Lindsay Pearson

4.87 Mr Dolton conducted an interview with Lindsay Pearson, which resulted in the signed statement attached at JTG 8.

4.88 Mr Pearson stated he had been employed by the Council since 1989. He is currently the Chief Planning Officer, a position he had held since late 2009. Prior to that his role was as Chief Planner (Development Control).

4.89 Mr Pearson provided a summary of the history of a planning application at Isles Quarry in the parish of Borough Green explaining that the application was submitted in late 2011. The application was subject to extensive discussion, negotiation and amendment all carried out in the context of consultation and re-consultation with Borough Green Parish Council. During this process the Parish Council took a close interest in the project. Planning permission was granted in late 2013.

4.90 Mr Pearson explained that at the time of the consideration of the application Councillor Taylor was Chairman of the Parish Council but not a Member of the Borough Council.

4.91 Mr Pearson commented on his knowledge of Councillor Taylor's involvement on the project. He stated he was aware that Councillor Taylor had taken a close interest in the future of Isles Quarry West for many years. Mr Pearson explained that he was not responsible for the plan making function at the time the site was identified in the LDF Core Strategy. He was aware that Councillor Taylor, possibly initially as an individual prior to his membership of the Parish Council, sought to be engaged in the Local Development Framework process for allocating development sites. Mr Pearson believed Councillor Taylor gave evidence at one of the examination sessions.

4.92 Mr Pearson was aware that following the allocation of the site within the LDF Councillor Taylor pursued a number of avenues seeking to demonstrate that somehow the process leading to the adoption of the allocation had been inappropriate. Mr Pearson understood that no fault had been found by any organisation that was asked by Councillor Taylor to investigate his concerns.

4.93 Mr Pearson stated that judging by a recent meeting he attended with Councillor Taylor and others Councillor Taylor remained of the view that the investigations had not been comprehensive enough to have reached the right conclusion as he saw it. This position seemed to influence Councillor Taylor's wider attitude to the Council and especially the planning process.

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- 4.94 Mr Pearson stated that Councillor Taylor had quite appropriately taken a close interest in the development of Isles Quarry through the planning applications process and that Councillor Taylor was fully entitled to take the interest forward as part of the construction process. Mr Pearson explained that dealing with contaminated materials, which was subject to planning control by way of a typical planning condition, was an aim shared by Council Officers and Members alike and was the right thing to do.
- 4.95 Mr Pearson explained that there remained some difficulty as Councillor Taylor wished to see a different approach, a more continuously interventionist approach, than was envisaged in the planning process. Mr Pearson felt this was at the heart of the current tensions. He explained that in light of Councillor Taylor's concerns the Council took advice from legal Counsel who he understood advised that the Council's adopted approach was consistent with Government expectations. Mr Pearson believed that Councillor Taylor did not accept this advice and that Councillor Taylor believed in the application of processes not normally encountered as a matter of routine in the planning process.
- 4.96 Mr Pearson stated there was always the opportunity to debate the appropriateness of process but this must be done in the light of an accurate reading of Government guidance.
- 4.97 Mr Pearson explained that Councillor Taylor claimed an historic experience of the use of the site from when he was employed there and that Councillor Taylor had identified the informal deposit of waste and contamination from up to 40 years ago. A consequence of this is that Councillor Taylor had disputed almost all aspects of the technical documentation but not from a perspective of scientific or technical experience or training. Mr Pearson stated Councillor Taylor was within his rights to question things on a continual basis but explained it caused problems in that Councillor Taylor's obvious frustrations that Officers could not endorse his interpretation of the appropriate process or much of what he suggests in terms of actual contamination seemed to lead to some intemperate behaviour. Particularly in email exchanges and website postings which Mr Pearson stated he had chosen not to follow.
- 4.98 Mr Pearson stated that his face to face contact with Councillor Taylor in meetings, including those relating to Isles Quarry West, Planning Committees and Council Boards, had in his experience been reasonably civilised.
- 4.99 Mr Pearson stated that it was his view that it was not productive to generate a list of instances of what he felt might be less than appropriate wording of emails as he thought it commonplace for those disgruntled with matters, whether or not their concerns were justified, to express their views in quite intemperate terms. Mr Pearson stated often face to face discussion of the same matter would be more even-tempered.
- 4.100 Mr Pearson also pointed out that as a Town Planner with 40 years' experience, much of that at a senior level, he was used to attempting the reconciliation of incompatible views. Mr Pearson stated that in most planning cases there were those who considered themselves winners and those who felt like losers. He said losers seemed often to feel free to express their disappointment in no uncertain terms. Mr Pearson said that he supposed there were not many terms of abuse that had not been levelled at him at some time during his career. He said it went with the territory.

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- 4.101 What Mr Pearson was not used to was such attitudes being expressed by elected Council Members whether at this Council or any other authorities where he had worked and certainly not in writing or broadcast through the internet.
- 4.102 Mr Pearson drew attention to one email dated 12 June (enclosed at JTG 10 **email 4** in the email schedule) in which Councillor Taylor alleged that the officer corps, but possibly directed at Mr Pearson personally, had deliberately withheld a document that should have been released under a freedom of Information request. Mr Pearson found such a false allegation quite disturbing and offensive. Mr Pearson stated he could not begin to understand either how, or more importantly why, the Council or its Officers would wish to withhold information. Mr Pearson explained that the Council and Councillor Taylor have a shared interest in ensuring that the site was developed in a way that ensured that contamination was adequately dealt with but that they may have different perspectives as to what that concept implied.
- 4.103 Mr Pearson pointed out that the file of email and other documentation provided as evidence for the investigation indicated a clear tenor of correspondence from Councillor Taylor, predominately sarcastic and betraying a disbelief in any view on these matters, especially anything said by officers, other than that which coincided with the view that Councillor Taylor held.
- 4.104 Mr Pearson stated that he found this rather sad and disappointing rather than more offensive.
- 4.105 Mr Pearson stated that he did not think that Councillor Taylor had behaved as he would hope a Member would behave even if in a state of dispute with the Council and Officers. Mr Pearson said even if there is disagreement there is no place for sarcasm or misplaced allegations of misbehaviour.
- 4.106 Mr Pearson said that in his experience Member/Officer relationships at the Council were well balanced and strong. He explained that Members did not slavishly follow Officer advice or alternatively, that they actively and continuously sought to dispute such advice. Mr Pearson said there was mutual respect even when there was disagreement. Debate was conducted in a mature and adult fashion and Members recognised the professional background of the Officers. In Mr Pearson's experience there was a strength of agreement in the role of public service and this was reflected in Members' respect for senior and also more junior Officers. Mr Pearson stated that most of his planning staff would have contact with Members not infrequently.

Councillor Mike Taylor

- 4.107 Councillor Taylor was interviewed by Mr Dolton in person on 24 October 2014. The interview was voice recorded and a transcript prepared (enclosed at JTG 9). Councillor Taylor was given the opportunity to make comments on the transcript.
- 4.108 In the interview Councillor Taylor confirmed that he was a Member of Tonbridge and Malling Borough Council having been elected in January 2014 and Chairman of Borough Green Parish Council since 2011. He also confirmed that he understood the purpose of the interview.

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- 4.109 Councillor Taylor explained that some of the remarks he had made could be interpreted as a breach of the code. However, the context of the last seven years of Isles Quarry and his inter relationship with planning officers and Members of the Council meant that it was part of a process. He felt that his meeting with the Chief Executive and Borough Solicitor where these concerns were raised was an attempt to intimidate him and silence him. When the Chief Executive and Borough Solicitor failed to take the threatened standards action forward, as an honourable person, he referred himself for investigation. He considered if an allegation has been made it should be tested not swept under the carpet.
- 4.110 Councillor Taylor explained that until 1977 he worked for ARC and Stangate Quarry. He then became a tipper owner/driver working out of Stangate and Isles Quarry and other places explaining that he had an intimate knowledge of Isles Quarry and what was buried there.
- 4.111 In 2007 he became aware of advanced plans to include Isles Quarry in the Local Development Framework for the building of 200 plus houses. He attended a Local Development Framework enquiry in 2007 and sat in front of the inspector and across from the then Chief Planning Officer, Brian Gates.
- 4.112 He argued with Brian Gates at great length about contamination at Isles Quarry. Mr Gates made a statement saying that the people of Borough Green supported housing development at Isles Quarry. Brian Gates produced a copy of the Parish Plan which Councillor Taylor said he found out later included references to support for development at Isles Quarry. Councillor Taylor said he had had a significant role in the production of the Plan and knew that the only reference to Isles Quarry in the Plan was as a derelict quarry in need of restoration.
- 4.113 Councillor Taylor said he then found out Borough Councillor Sue Murray, who was also Chair of the Parish Council, had taken the publicly witnessed Plan and inserted ten action points. Councillor Taylor said he was subsequently told by the Police who investigated the matter that the ten action points were drawn up by a planner. They were in what would loosely be referred to as "planner speak". He suspected that a planner was involved with Councillor Murray in forging the Parish plan so he spent much time, through the Standards Board, the Ombudsman, the Planning Inspectorate and the Government Ombudsman, trying to get somebody to look at the process. He believed that the system was iron clad and that if somebody raised something that had gone wrong, the system would investigate. He said it (the system) had not, so we were left with 200 houses to be built at Isles Quarry.
- 4.114 Councillor Taylor said that in 2010 he lodged a complaint against the Council for their part in the matter. The complaint was heard by the now Chief Executive, Julie Beilby and the now Borough Solicitor Adrian Stanfield.
- 4.115 In the subsequent letter to him about the investigation, the then Chief Executive, David Hughes, cited Brian Gates as having said that the Parish Plan was not mentioned in front of the Inspector. Councillor Taylor then wrote complaining to every Member of the Council and every Senior Officer and Executive of the Council. A very honourable member of the Council anonymously sent him a copy of a briefing note sent by Steven Humphrey and Brian Gates to all Members of the Council wherein Brian Gates said Mike Taylor had ample opportunity to discuss the Parish Plan in front of the Inspector.

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- 4.116 Councillor Taylor said these two statements were contradictory so he had evidence that a Senior Officer of the Council lied. He said this set the stage for his belief about the behaviour of Officers. He said he didn't know if there was anything criminal behind what happened or whether it was just a question of colleagues covering up for what Brian Gates did wrong with Sue Murray.
- 4.117 He said he still did not know but he had found that since then information was withheld from him. He said that even though he was a Borough Councillor with access to all Council documents he had to resort to the Freedom of Information Act to achieve those documents and even then documents were withheld. He said there was clear evidence in all the paperwork that had been released over the last nine months of documents being withheld from him. He said they might be released after a month but the problem was they were dealing with a live construction site where every day they were moving forward so the delays meant that contamination was not being dealt with properly at Isles Quarry.
- 4.118 Councillor Taylor then moved to late 2013 when they were waiting for the planning condition on contamination to be issued. About 11, 12 or 13 November he was notified by residents that work had commenced at Isles Quarry before the planning permission had been issued. He went and checked and took photographs. There was major excavation underway and the buildings had been virtually demolished.
- 4.119 On contacting the Planning Department Councillor Taylor was told by Lindsay Pearson that it wasn't excavation, it was species related ecological investigation. He thought it was shortly after this that he made the b***cks comment. He said it was clearly untrue, you did not do ecological investigations with 20 ton diggers and 40 ton dump trucks and you did not dig massive holes.
- 4.120 On 21 December 2013 the Planning Officers issued planning permission by email under delegated powers so the contamination permission was never tested in a Planning Committee which is what Councillor Taylor had asked for. Councillor Taylor said that since then he had pressed and pressed and pressed to ensure that the site was developed safely. He acknowledged he had spent several years trying to stop the site happening in the first place but once the permission was issued in March 2013 the focus changed. As it was going to happen it was now to ensure that it was done safely and he said he did not have any faith in the Officers' ability to keep Crest on the straight and narrow.
- 4.121 Councillor Taylor stated that on 7 March 2014 an emergency item was raised at an Area Planning Committee meeting about the contamination remediation at Isles Quarry. Members were assured by Planning Officers that everything was under control, there was no danger to public safety, future residents, the environment and the water system; they had a full handle on contamination remediation.
- 4.122 He said that at about the same time he received a large bundle of emails under the Freedom of Information Act. These indicated that no Planning Officer had visited the site until 28 February 2014, bearing in mind work started in November 2013. Councillor Taylor said they had aerial photographs and the main contamination had been moved on 8 December 2013. The Scientific Officer for the Council responsible for contamination first visited the site on 28 February 2014 and had to ask for directions. Councillor Taylor said that clearly the Planning Officers were not exerting proper control over

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remediation on the site. He said that was vindicated by a recent email where the officers had finally capitulated and started asking to require Crest to remediate properly.

- 4.123 Councillor Taylor acknowledged that he was aware the current investigation was only looking into his conduct and admitted that he had gone as close to the line of breach of code as he could.
- 4.124 He said the only way he could get any response was to kick hard and keep kicking. He tried to be pleasant and build relationships and said if his relationship with Officers elsewhere at the Council and at Kent County Council were investigated it would be found that he was capable of building very strong friendly relationships for the benefit of his community. He stated he had been unable to develop that sort of relationship with Planning Officers because he believed they were hiding things from him and the only way was to kick and kick hard.
- 4.125 He went on to say he had a friendly relationship with Planning Officers on a face to face basis as he needed their help for the benefit of his community. He was not going to willingly breach the possibility of a good relationship but the Isles Quarry issue was so important to Borough Green as it was increasing the village by 10 percent and risking the water supply, the environment and the future residents' health.
- 4.126 Councillor Taylor acknowledged that there were emails to Officers that were robust but a lot of the time he was friendly to the Officers as he wanted a friendly relationship. He said he had found his dealings with the Planning Officers over many years to be friendly but if there were things that needed a more thorough response unless he was robust he got the fluffy planning speak answer. He was convinced that had he followed a course of action that an ordinary Councillor might take he would not have achieved what he had today.
- 4.127 In response to a question about an email dated 19 May 2014 from mike.truck to Steve Humphrey and Adrian Stanfield, Councillor Taylor acknowledged that he was the sender of the email. He also confirmed that it had been sent to quite a wide circulation including members of Borough Green Parish Council.
- 4.128 Councillor Taylor confirmed that in the email he referred to '*you lot in the developer's pocket*' by that he was meaning that Development Control implied ensuring the developer complies with the terms of planning conditions. If the developer was not complying and the Planning Department did not take them to task it indicated an unhealthy relationship between the planner and the developer. He explained that what he meant was that the planner was there to assist the developer and if the developer was crooked it followed that the planners were. He stated that he did not believe there were any financial implications in the relationship.
- 4.129 Councillor Taylor went on to explain that the public saw planners as ensuring development was carried out properly but the planners did not see it that way. The planners saw their role as persuading the developer to do things right and draw back from enforcement more than the public realised. He said development control was not a very good term; perhaps it should be development persuasion.

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- 4.130 Councillor Taylor stated he could not know how others would view his comment that the planners were in the developer's pocket and said if they needed clarification they could ask him. He said his comment made the statement even more robust than he actually intended and in a sense that was to the good. Councillor Taylor acknowledged that it was feasible that copying the message to Members of the Parish Council could be viewed as him questioning the integrity of Senior Officers and therefore questioning the repute of the authority. He confirmed he was questioning the integrity of the Officers.
- 4.131 Councillor Taylor also confirmed that an email dated 20 May 2014 was sent by him to Lindsay Pearson and Steve Humphrey and copied to Members of the Parish Council (enclosed at JTG 10 **email 2** in the email schedule). In the email he stated he had been forced to use a Freedom of Information request and stated "*hiding and withholding information merely reinforces my case that something dodgy is happening*". He explained that he had asked for every possible mortal item of information and that Lindsay Pearson had released a big block of emails in response. In one of the emails released there was an attachment called 002 obstruction report. This was a report given to the Planning Department by Crest Nicholson itemising all the material removed from the site during the first few days. He asked why he had not received the attachment as it was clearly part of the Freedom of Information request as it was attached to the email. As it was not released to him Councillor Taylor stated that it means they were hiding it from him; that was withholding.
- 4.132 Councillor Taylor considered his comments appropriate as he had asked for the information and it had been deliberately withheld. He said he was at the end of his tether and he used words that were on the line.
- 4.133 The next email was dated 30 May 2014 sent by Councillor Taylor to the Leader of the Council and the Chief Executive and copied to Senior Officers and Jennifer Wilson of the Environment Agency (enclosed at JTG 10 **email 3** in the email schedule) Councillor Taylor confirmed that the message was addressed "*Dear all*" and in the email he stated "*So you are breaking the law*". By this he was referring to the Freedom of Information Act and that not all of the documents requested had been sent to him. The Act was the law therefore he considered the comment entirely appropriate.
- 4.134 Councillor Taylor confirmed that a further email was addressed personally to Lindsay Pearson and was copied to others including the Parish Council. He also confirmed that in the email he stated "*the obstruction report was wilfully omitted from the FOI documents by you*" and that this was a direct reference to Lindsay Pearson. He accepted that it might have been a lowly clerk in the Planning Department who actually printed the emails, punched holes in them, put the tag through them and put them in an envelope but they were sent on behalf of Lindsay Pearson and it was he who wrote the email saying they had been posted.
- 4.135 Councillor Taylor accepted that in the email he also stated "*it is now perfectly clear that the planning department has ways to concert and campaign missing information, lies and deception, and deliberately withheld information*". He acknowledged that he was saying the Planning Department and the Council partakes in lies and deception and that this could be seen as an attack on the repute and integrity of that department.

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- 4.136 Councillor Taylor considered his comments appropriate as information was deliberately withheld from him. The Officers had lied whoever formulated the lie. He considered it appropriate to copy the email outside the Council because people have a right to know what is being done on their behalf. The Council was elected by the people and Council Officers were employed to serve the people of the Borough. *"They are employed by us to do what we want them to do."*
- 4.137 Councillor Taylor confirmed that an email dated 13 June 2014 was sent by him to Adrian Stanfield (enclosed at JTG 10 **email 5** in the email schedule). In the email he began by stating *"my first response to your email began with b and ended with cks"*. He explained that he considered the comment appropriate as if somebody sent him an email which was bollocks he would call it bollocks but that it was done politely.
- 4.138 Councillor Taylor further explained that his response was to an email from Adrian Stanfield which had selectively quoted Counsel's opinion. He stated he had used the word selectively as the Counsel's Opinion reinforced his opinion that the Council had a responsibility to monitor remediation at Isles Quarry.
- 4.139 Councillor Taylor stated Adrian Stanfield deliberately submitted a question to Counsel to lead Counsel's answer by inferring that he wanted continuous monitoring. Counsel responded saying continuous monitoring was not appropriate which Councillor Taylor said he agreed with. What Councillor Taylor was asking for was occasional monitoring so he stated that the way Mr Stanfield had phrased the question to Counsel and the way he had interpreted Counsel's opinion back to Members was *"bollocks"*.
- 4.140 Also in the same email Councillor Taylor confirmed that the comment *"we are misinformed by you"* was directed to Adrian Stanfield. He considered this an appropriate comment to make in an open email as he believed in transparency. By explanation Councillor Taylor stated that if he had done something wrong he was quite happy for it to be widely circulated pointing out that every member of the Council and the Parish Council knew of the standards complaint against him. He said he thought he had even spoken to the press about the complaint.
- 4.141 Councillor Taylor confirmed that an email dated 14 June 2014 was sent by him to all Members of the Council (enclosed at JTG 10 **email 6** in the email schedule), the subject of the email was headed *"Adrian Stanfield"*. Councillor Taylor stated that the purpose of the email was to inform all the Council Members what Officers are doing on their behalf hence the comment *"but I'm afraid it is intended to mislead"*. Councillor Taylor acknowledged the comments directly challenged the integrity of the Senior Solicitor and that in turn would have an effect on the reputé of the Council. Councillor Taylor went on to explain that it was not his email that brought the Council into disrepute; it was the actions of the Chief Solicitor that had done that.
- 4.142 Councillor Taylor confirmed that two emails dated 18 June 2014 were sent by him, the first headed *"Counsel's Opinion release of documents"* (enclosed at JTG 10 **email 7** in the email schedule) which was personally addressed to Adrian Stanfield and copied to others including the Parish Council Members. In the email Councillor Taylor stated *"I must also question your role in this affair Adrian as someone whose duty is to advise the Council how to comply with both the law and the Council's laws"*.

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- 4.143 Councillor Taylor confirmed this was a direct challenge of Adrian Stanfield's integrity as he believed Adrian was at fault. Councillor Taylor believed it was correct to challenge Adrian Stanfield in a widely circulated email as he believed in transparency and the recipients had a right to know what was being discussed. As Council Members, Parish Councillors and members of the public they had a right to know that he believed that the evidence showed that Adrian Stanfield had not carried out his job properly.
- 4.144 In a second email to Adrian Stanfield on 18 June which was also copied to others Councillor Taylor stated "*I have clear evidence of lies involving many senior officers*". Councillor Taylor said it was appropriate to put that in an email as letters in 2010 and a subsequent briefing were directly contradictory so there was a lie. He stated other Senior Officers had condoned that lie and there was an email trail that indicated the Senior Officers involved in the lie. He stated the short statement could be an over clarification, an over simplification.
- 4.145 Councillor Taylor confirmed that he sent an email to Glenda Egerton on 25 June 2014 (enclosed at JTG 10 **email 12** in the email schedule). In the email he made a humorous dig at Adrian Stanfield in a comment about the cost of the Counsel's Opinion. The comment was in response to an offer to send Councillor Taylor some documents he said "*save the postage and put it towards Adrian's collection to pay back the £1,625 he paid for the flawed opinion*". Councillor Taylor said this was not an insult towards Glenda Egerton but a colleague based humorous comment.
- 4.146 Councillor Taylor confirmed that he attended a meeting on 27 June 2014 at which Adrian Stanfield, Julie Beilby, Councillor Mrs Kemp and Councillor Darby were also present. Councillor Taylor believed the purpose of the meeting was to try to intimidate him into silence. He said he tried to steer the meeting towards the behaviour of the Council with regard to Isles Quarry and why that had generated the things Adrian Stanfield was concerned about. Councillor Taylor confirmed that the minutes of that meeting were an accurate record and could be attached to this report as evidence (attached at JTG 11).
- 4.147 Councillor Taylor explained that he thought there was a very good relationship between Officers and Members at the Council and pointed out that he had stated at the meeting on 27 June that he thought "*Tonbridge and Malling are a bloody good Council except for this one flaw*". He said that he hoped there was a good relationship between him and Officers and other Members on anything apart from Isles Quarry.
- 4.148 Councillor Taylor confirmed that the website 'Borough Green News' was his own personal website. It was paid for by him and was hosted in America so the Council could not do anything about it. He confirmed that he was the only one who could post items on to the website but there was a guest book for others to leave comments.
- 4.149 Councillor Taylor confirmed that he published an email dated 13 June on the website and in that email he stated "*A Stanfield is the Council's solicitor and he has wasted money obtaining a flawed opinion because he biased the question*". He explained that whilst the website was accessible worldwide only the people of Borough Green read it. He considered it appropriate to post the email on the website as it did not contain anything he had not said directly to Adrian Stanfield. He also believed that the waste of public money was a matter that the public should know about. A print out from the website is attached at JTG 12.

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- 4.150 Councillor Taylor also confirmed that he posted on the website a reference to the meeting held on 27 June and that in the post he referred to Mr Stanfield using his little devious tricks and that in future he would not meet him without a witness being present. Councillor Taylor considered these comments appropriate on that forum as the public had a need to know how the Members they elect and the Officers they employ are behaving and if that behaviour is wrong, people need to know. Councillor Taylor also confirmed that the same post referred to Planning Officers saying *“the ones who have been misleading us for the past seven years”*. A print out from the website is attached at JTG 12.
- 4.151 Councillor Taylor explained that the purpose of the website was to inform the public if employees or elected members are guilty. He said he was also aware that Officers and Members read the website so it gives them a second prick at their conscience.
- 4.152 Councillor Taylor considered that having gone through all the emails and other documents he had not been as bad as he first thought. He went on to state that he was angry at the time and there was nothing there that he would not say again today.
- 4.153 Councillor Taylor confirmed that he was aware of the Code of Conduct and the particular sections relevant to the allegations made. He believed that he had maintained a high standard of conduct and had acted with integrity. He did not consider he had bullied any Officer particularly as he believed he had no authority over the Officers. He believed they had authority over him referring to the increase in the size of the village where he lived. Councillor Taylor believed it was the Officers who had brought the Council into disrepute.

5. Summary of the material facts

- 5.1 Councillor Mike Taylor is an elected Member of Tonbridge and Malling Borough Council.
- 5.2 The Borough Council has adopted a Code of Conduct that includes provisions for its Members to act in accordance with the Nolan Principles. Of particular reference in this case is a requirement to show leadership. The code also states that Members should not bully any individual and should not act in a manner that might bring the Member's Office or the authority into disrepute.
- 5.3 Councillor Taylor represents the Borough Green and Long Mill Ward on the Council. Within the ward lies an area known as Isles Quarry West. Planning permission has been granted for housing development at Isles Quarry West.
- 5.4 Councillor Taylor has a long standing association with Isles Quarry having worked as a haulage contractor operating out of the quarry and also by virtue of his residence in the area. Councillor Taylor has taken a close interest in the site since the commencement of consideration of the area as a potential development site.
- 5.5 For some time Councillor Taylor has been of the opinion that the designation of the site for development was not properly considered. He has made a number of complaints about the process and other matters relating to the development of the site.
- 5.6 After Councillor Taylor's election to the Borough Council in January 2014 he took up his concerns over the development in his capacity as the ward Councillor for the area. This involved numerous emails between him and various Officers of the Council.
- 5.7 During May and June 2014 some of the emails sent by Councillor Taylor to Officers and Members of the Council, which were also copied widely outside of the Borough Council, caused concern to the Officers.
- 5.8 These emails included references to Council Officers:-
- being in the developers pocket;
 - lying and misleading Members;
 - wasting public funds; and
 - not carrying out their duties properly.

Some of the above allegations were also posted on an open website.

- 5.9 Councillor Taylor was invited to a meeting with Senior Officers of the Council the purpose of which was to discuss his behaviour. At the meeting Councillor Taylor continued to pursue his complaints regarding Isles Quarry West. Following the meeting Councillor Taylor referred himself for investigation in relation to the issues raised regarding his behaviour.

6. Councillor Taylor's additional submissions

6.1 The following comments were received from Councillor Taylor on the draft version of this report:-

(a) In an email from Councillor dated 13 March 2015 he said:-

"I absolutely refuse to accept your conclusions.

1. In your para 1.7 [1.6 in this final version of the report], I accept it could be said that I should not have publicised the irregularities discovered. However, it is the actions of Councillors and Officers that have brought the Council into disrepute, not me, I have merely reported the facts, facts based on clear and incontrovertible evidence.

2. Para 1.8 I simply cannot bully someone who is in a position of absolute power over me and my community - bullying is an abuse of power, and I have none.

OED - Bully - person using strength or power to coerce others by fear, to persecute or oppress by force

3. Para 4.2 [4.38 in this final version of the report] highlighted passage - at the time of the interview it may well have been just my belief, but as a subsequent later Urgent Item at an Area 2 Planning Committee will confirm, Crest were guilty of inappropriately burying contamination, and subsequent alterations to the remediation program are only now being completed.

I am sure the process will continue if expedient to TMBC, but I am very sad that after such a detailed "independent" investigation you have failed both me and the people of Borough Green. I appreciate that I am wasting my time bothering with any more detailed response to your report."

(b) In an email from Councillor Taylor dated 14 March 2015 he said:-

"Whilst I realise that your mind is made up, I am nothing if not tenacious, some might say obstinate, but there are real wrongs that need to be righted, and I had hoped that the intervention of an independent mind would bring that clear focus. I am undoubtedly wasting my time itemising the failures in your report, but here are my more considered thoughts. I accept the whole Isles Quarry fiasco is incredibly complicated, which has made it so much easier for TMBC Officers to mislead their members. TMBC members, apart from party loyalty, simply have enough problems in their own patch to give Borough Green the detailed work needed to understand what has been done to us, so they believe the officers.

1.2 add "since 2007" between "matter" and " Isles Quarry".

1.6 It is not me that has brought the Authority into disrepute, it is their own actions.

1.8 comment already made, but I repeat the point - to bully someone, you have to be in a position of power over them - these people hold

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absolute power over me and my community, and if Isles Quarry goes wrong, that includes the power of life and death. Not one word I have ever said has been used to challenge the behaviour of these officers, so I find your suggestion of bullying absolutely laughable.

4.9 I would like it highlighted that I too treated Martin [Dolton] with respect. Indeed I would go so far as to say I genuinely liked him. However, it appears I was mistaken, so I won't be meeting him for the beer he offered.

4.14 FOI information released, together with authenticated photos, and subsequent actions by Planning Officers in Oct 14 vindicate my concerns about contamination, as confirmed in para 4.79 by Steve Humphrey. However, by the time I finally forced them to agree, nearly a year had passed before they took any action.

4.27 Adrian Stanfield's request for Counsel's Opinion was framed in such a way as to obtain a biased answer in favour of TMBC's position. However, it failed, because Counsel reinforced my statement that TMBC do have a responsibility to monitor a site, particularly one as contaminated as IQW. Counsel said the "developer is principally responsible", note he does not say "Solely" - there is an onus on TMBC which they absolutely failed - clear dereliction of duty.

4.28 4.29 From commencement of works Nov 2013 until FOI release in March, FOI shows not one officer visited the site to monitor contamination remediation, despite repeated correspondence, and despite repeated assurance that everything was in hand. The obstruction report referred to was an attachment to an email in the FOI, and under the terms of the FOI should have been released. It took more correspondence and discussion before it was reluctantly released. Not releasing information that is due is withholding information.

4.46 Mr Stanfield fails to note that the briefing note and Chronology released by Steve Humphrey, Brian Gates and himself, directly contradicts the final report by David Hughes into an "investigation" into my 2010 complaint carried out by Adrian Stanfield and Julie Beilby. The briefing was copied to all mentioned in this paragraph and others, and one side of that contradiction, or the other, must therefore be a lie. simple. As time has gone by, their joint complicity in that lie means they are also guilty of the subsequent cover up.

4.63 Adrian Stanfield has made statements to me twice in meetings with only another officer present. He now denies statements made on both occasions. I cannot prove what he said because I have no witness and no contemporaneous record, but I personally know he lied. which is why I will not now meet with him, or any other officer, without a witness present.

4.64 There is enough evidence available, including those officer's own testimony, that clearly shows they have misled me, the public and the Council repeatedly over many years, and still are.

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4.70 TMBC failed to follow Planning Guidance that quite clearly recommends that on a site of known contamination such as IQW (not my evidence, but their own reports), that the contamination remediation should be carried out and validated before any permission is granted for development.

4.71 Mr Humphrey mentions the BG Parish Plan, but neglects to mention that this was altered after public consultation, from a consensus against further development in BG, to outright support for development recommending Isles Quarry. This "forgery" was carried out by Cllr Mrs Sue Murray, TMBC ward member for BG & Longmill, and was subsequently used by Brian Gates to prove to the Inspector that there was public support in BG. The initial Police investigation reported that the "Action Points" inserted into the Plan were written by a planner, not a member of the public.

4.89 I have never advocated a "continuous intervention" as suggested by Lindsay Pearson. I did expect occasional monitoring of the remediation process by Planning Officers, but the FOI from them, and an email from LP, clearly shows that no officer visited the site between Nov 2013 and March 2014 whilst the main contamination earthworks were carried out. And throughout that time those officers repeatedly assured all parties that everything was in hand.

4.91 Lindsay Pearson is miss-stating the facts here, I would call it lying. I have always accepted the technical contamination surveys by Hyder and URS Scott Wilson as accurate and factual, indeed I have commented that they show the situation to be more contaminated than I had thought. My dispute with the planners is that Crest/Adbly completely ignored the recommendations of the URS Scott Wilson Remediation strategy, and in the first weeks of the process removed large quantities of contaminated material from Area 1 without sampling, buried it in Area 3&4, a fact subsequently accepted by Officers in October, resulting in a requirement for Crest to carry out further ground investigations, the results of which have just been released. You may see that as an acceptable process, I see it as gross dereliction of duty by planners, risking public health, and yet they are still denying their guilt.

4.96 The first FOI released a tranche of emails in early March, but did not include an attachment to one email. Under the detailed terms of the FOI that report should have been released. After much heated correspondence that Obstruction Report was released a few weeks later. It should have been released with the emails, or at best when I noted it was missing. To my mind not releasing selected pieces of available information is with-holding, and they are clearly guilty of illegally withholding information. The fact that I have not bothered to lodge an ICO complaint does not absolve them of guilt for their actions which were incontrovertibly criminal.

4.103 What I agreed in discussion with Martin was that I accept that my comments might be taken as breach of the Code in isolation by some, when set against the backdrop of the lies and misinformation carried out by Officers in general, the use of those comments was more than justified, indeed necessary. I would even make the case that if I had not used that approach, I would not have eventually got the action by officers against Crest in October.

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Several of your witnesses have observed that my complaints have been investigated on many occasions, and rejected. That is simply untrue:

- 1. SBE [The former Standards Board for England] declined to take individual action against Parish Councillors unless I could name each individual.*
 - 2. SBE declined to take action against the PC as a body, as it is outside its remit.*
 - 3. LGO [Local Government Ombudsman] declined to take action because it was individuals, not the PC as a body, and therefore outside its remit*
 - 4. Police investigation was halted after the original officer was moved to another task, and I understand Inspector Jon Kirby then phoned each party and asked them if they had done anything wrong, and stopped the investigation. He stated he could find no evidence of inappropriate financial action, he was actually supposed to be looking for false documents and malfeasance.*
 - 5. Planning Inspector advised me that she could only look at evidence that was presented within a 6 week period before examination, and was not allowed to use information that was presented late.*
 - 6. Planning Inspectorate have no mechanism to review the examination process, or revisit an LDF examination, so declined to pursue the matter. They have no mechanism to investigate malfeasance in the planning system*
 - 7. Secretary of State declined to intervene, as only the Planning Authority can alter an LDF once it has been approved by an Inspector*
 - 8 Our MP, Sir John Stanley, was very sympathetic, and sponsored me in a complaint to the Government Ombudsman. The GO declined because I had access to the Courts to seek a JR. The fact that we haven't got the money, and TMBC would waste our own money fighting us, meant that avenue was not open.*
 - 9. The only investigation that went to term was that carried out by TMBC, carried out by Julie Beilby and Adrian Stanfield, and surprise, they found that no one at TMBC had done anything wrong.*
- So there never has been an independent investigation into the irregularities, so when TMBC say there has, they are lying again.*

If TMBC were the honest authority they profess to be, they would have listened to my evidenced concerns back in 2007, and compromises could have been reached that allowed them their houses, and kept the rest of us safe. They are building on contaminated land on a 50's unregulated landfill, on top of our drinking water aquifer. I sincerely hope that their scandalous behaviour does not result in a disaster, because it is not them that will suffer, it is me and my community.

I have always naively believed that whilst individuals may do wrong, if that wrong is uncovered, the system itself is pure, and right will triumph.

TMBC Officers and some members, have consistently lied to and misled, the Planning Inspector, the public, and the bulk of TMBC members. It is not me who has brought the Council into disrepute, it is their own disreputable behaviour.

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Finally, I deliberately reported this "standards allegation" myself to trigger an outside investigation, at last someone who is independent of TMBC will look at the evidence, and you have abjectly failed me and my community. And I would say the same to your face."

(c) In an email from Councillor Taylor dated 15 March 2015 he said:-

"Further to my thoughts yesterday, outside the remit of responding to your report, but still relevant:

1. I have hard evidence going back to 2003 behind all my allegations, it is not just a product of a fevered imagination. I accept it is too complicated to be covered by your investigation, but if a proper investigation was carried out, I am sure that there is much at TMBC that would corroborate my claims, but it is a problem to know the FOI questions to ask, and I would have thought that much would have been shredded by now.

*2. If I give you the benefit of the doubt about your independence, that would mean that TMBC have no idea whether you might find me "not guilty" of breach of the Code. As there is an election coming up, having Sue Murray returned to post as a Councillor & Cabinet Member for Planning could seriously taint the whole (conservative) Council if my actions are vindicated. It would therefore make sense for them to get rid of her before any c**p hit the fan. And as I intimated quietly to Martin after the recorded interview, that is exactly what happened."*

6.2 I have considered Councillor Taylor's comments with care. They consist in the main of three types of comment:-

- (a) minor additions or corrections to the report. I have amended the report where appropriate;
- (b) an assertion that he was not able to bully officers as he was not in a position of power over them. I have taken account of those views in my reasoning in section 7 below;
- (c) a restatement of Councillor Taylor's views that, in essence, officers had lied to him in respect of the Isles Quarry development. I have again taken account of those views in my reasoning in section 7 below.

7. Reasoning as to whether there have been failures

Official Capacity

- 7.1 The first issue to consider is whether, at the time of the alleged incidents, Councillor Taylor was acting in his official capacity as a Borough Councillor. I am mindful that all of the email correspondence referred to was sent from a private email account; that is 'mike.truck@btconnect.com'. Each email was 'signed' Mike. Notwithstanding this, having given careful consideration to the subject matter, the recipients of the emails and Councillor Taylor's references to acting as the representative of his community, I am satisfied Councillor Taylor was acting in his official capacity. I also had regard to the email dated 30 May 2014 in which Councillor Taylor states ".....I used FOI and not just my right as a Councillor....." thus indicating that he was using his position as a Councillor to seek the information which has been the focus of these incidents.
- 7.2 I have also considered the status of Borough Green News and the posts on that website. First, the website itself has no indication of being an official site for either the Council or any individual Councillor. It clearly states the site is "funded and operated by Mike Taylor as a public service to residents". However, I have also considered the individual items posted on the site that have been referred to, these make references to Councillor Taylor's activity as a Councillor. In addition the posts on the website include and/or make reference to some of the emails referred to above and therefore, on balance, I conclude that it is reasonable to believe Councillor Taylor was acting in an official capacity when he published those items on the website.
- 7.3 Of more significance I have considered Councillor Taylor's conduct following the meeting held on 27 June. There is no doubt that Councillor Taylor's attendance at that meeting was in his official capacity as an elected Member of the Borough Council. It therefore follows that anything emanating from that meeting was entirely due to Councillor Taylor's position as a Councillor. I therefore conclude that the emails and web postings relating to that meeting were actions carried out by Councillor Taylor in and associated with his position as a Borough Councillor.
- 7.4 I therefore conclude that Councillor Taylor was acting in his official capacity as a Borough Councillor in the matters subject to consideration by this investigation and therefore subject to that Council's Code of Conduct.

Disrepute

- 7.5 The Council's code of conduct requires that members must promote and support high standards of conduct when serving in their public posts by leadership and example. Whilst this is a somewhat aspirational requirement, I consider that one of the important aspects of leadership would be maintaining the integrity of the Council. As such it is relevant to consider how any allegation of misconduct might impact on the reputation of the Council. I have therefore considered guidance issued by the then Standards Board for England (SfE). Question 43 on page 66 of the Case Review 2010 (2011 Edition) published by SfE advises that disrepute is:-

*"....a lack of good reputation or respectability.
In the context of the Code of Conduct, a member's behaviour in office will bring that member's office into disrepute if the conduct could reasonably be regarded as either:*

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- 1) *Reducing the public's confidence in that member being able to fulfil their role; or*
- 2) *Adversely affecting the reputation of members generally, in being able to fulfil their role."*

7.6 Q44 on the next page of the Case Review 2010 advises that:-

"An officer carrying out an investigation...does not need to prove that a member's actions have actually diminished public confidence, or harmed the reputation of the authority...the test is whether or not a members' conduct "could reasonably be regarded" as having these effects.

The test is objective and does not rely on any one individual's perception. There will be a range of opinions that a reasonable person could have towards the conduct in question."

7.7 Q42 on page 66 of the Case Review indicates that:-

"A case tribunal or standards committee will need to be persuaded that the misconduct is sufficient to damage the reputation of the member's office or authority, as opposed simply to damaging the reputation of the individual concerned."

7.8 In applying the Code to the circumstances of an alleged breach of disrepute, it is established that it is not necessary for the member's actions to have actually diminished public confidence, or harmed the reputation of the authority. The test is whether or not the conduct could 'reasonably be regarded' as having these effects. However, the conduct must be sufficient to damage the reputation of the member's office or the Council, not just the reputation of Councillor Taylor as an individual.

7.9 In this case, there have been a number of issues drawn to my attention during the course of this investigation. I have considered each in detail, the first being an email sent at 12.16 on 20 May 2014 (**email 2** in the schedule). In the email Councillor Taylor states:-

"I realise Planners still don't really understand the concept of transparency, but surely you can see that the longer you withhold information, the less credibility it has. Whilst contemporaneous notes can still be 'fudged', they have a truth they don't have weeks later when eventually dragged into the light. This whole fiasco could have been averted had planners simply kept us up to date, as is our right. I am sure Martin is duly angry at yet another expensive FOI, but I have been forced to use them as a last resort to obtain withheld information. Hiding and with-holding this information merely reinforces my case that something dodgy is happening, and that you are covering it up."

7.10 During interview Councillor Taylor acknowledged that he used words that were "on the line". I have carefully considered the wording and the fact that the email was copied to others outside the Borough Council. My conclusion is that on this occasion, whilst the comments were unjustified and unwise Councillor Taylor may have just stayed on the correct side of 'the line'.

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- 7.11 In a further email sent at 13.00 on 30 May 2014 (**e-mail 3**) Councillor Taylor's allegations become more robust. Councillor Taylor, in interview, confirmed that the email was copied to others outside the Borough Council including all Members of the Borough Green Parish Council and an employee at the Environment Agency. In the email Councillor Taylor states:-

"So you are breaking the law, which is precisely why I used FOI and not just my right as a Councillor to require sight of the evidence".

- 7.12 This is an allegation that the recipients, Nicolas Heslop, Julie Beilby and Adrian Stanfield, were guilty of breaking the law.

- 7.13 Councillor Taylor sent another email on 12 June at 17.59 (**e-mail 4**). This was addressed personally to Lindsay Pearson but was also copied to Members of the Borough Green Parish Council. The email is quite lengthy and includes some specific allegations. These include:-

"What angers me most is that the Obstruction report was willfully omitted from the FOI documents, by you, and would have answered a lot of my questions without weeks of emails, threats, speeches and questions.."

"It is now perfectly clear that the Planning Department has waged a campaign of misinformation, lies, deception and unnecessary secrecy. You have deliberately withheld information"

- 7.14 During interview Councillor Taylor acknowledged that these comments could be seen as an attack on the repute and integrity of the Planning Department.

- 7.15 Following further emails between Councillor Taylor and Officers at the Council, Councillor Taylor sent an email at 17.02 on 13 June 2014 (**e-mail 5**) to Adrian Stanfield and Hazel Damiral. This email was also copied to others. The email commenced:-

"Adrian; a big email form [sic] TMBC, it must be Friday evening again. My first response to your email began with b, and ended cks.

- 7.16 In interview Councillor Taylor confirmed that the comment was directed at Adrian Stanfield.

- 7.17 Councillor Taylor sent an email to all Members of the Borough Council at 16.07 on 14 June 2014 (**e-mail 6**). The email was copied to Adrian Stanfield. In the email Councillor Taylor stated:

"... but I'm afraid it is intended to mislead"

- 7.18 During his interview Councillor Taylor acknowledged that his comments were challenging the integrity of Adrian Stanfield and that this could have an effect on the repute of the Council.

- 7.19 Councillor Taylor sent a further e-mail at 14.29 on 18 June 2014 (**e-mail 7**). This was addressed to Adrian Stanfield and Nicolas Heslop and copied to others including members of Borough Green Parish Council. The email commenced Dear Adrian and the penultimate paragraph stated:-

"I must also question your role in this affair, Adrian: as someone whose duty is to advise the Council how to comply with both the Law

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and the Council's own rules, I cannot understand how you have countenanced and condoned the withholding of information."

- 7.20 Later, on 18 June 2014 at 19.07, Councillor Taylor sent an email to Adrian Stanfield and copied to other Senior Officers (**e-mail 11**). In the email Councillor Taylor states:

"I have clear evidence of lies involving many senior officers"

- 7.21 Taken in isolation like the first email referred to above some of these messages could be considered to be very close to the line. However, when direct personal allegations are made in communications that are distributed widely the intent and purpose must be questioned. Councillor Taylor continually acknowledged that his comments could be construed as an attack on the integrity of Officers and the Council and that this could affect the repute of the Council. I have no hesitation in agreeing with Councillor Taylor and have concluded that allegations he made about Officers lying, wilfully withholding information and misleading him were not appropriate and could reasonably be regarded as bringing the authority in to disrepute.

- 7.22 Whilst not part of the Council's Code as such, annexe 1 to the Code refers to the seven principles of public life and states that *"in order to help maintain public confidence in this Authority, you are committed to behaving in a manner consistent with the following principles..."*. The principle of integrity is expressed to require that:-

"...you should value your colleagues and staff and engage with them in an appropriate manner and one that underpins the mutual respect that is essential to good local government. You should treat people with respect, including the organisations and public you engage with and those you work alongside."

- 7.23 I acknowledge that Councillor Taylor feels very strongly that the Borough Council has mishandled planning issues at Isles Quarry and that Officers of the Council have withheld information from him. It is part of the role of members to hold officers to account but as Mr Stanfield says in paragraph 14 of his statement:-

"It is entirely legitimate for a member of the Borough Council to raise concerns with officers over the implementation of a major development within their ward. However, the tone of the correspondence from Councillor Taylor became increasingly personal and accusatory. Furthermore, the personal accusations made by Councillor Taylor were often copied to a wide audience including the other Borough Council Members, Members of Borough Green Parish Council and third parties such as Crest and the Environment Agency. I believe there is a clear distinction between the existence of a legitimate issue for consideration and the manner and tone in which that issue is pursued. From my conversations with Councillor Taylor, it is apparent to me that he sees no such distinction."

- 7.24 I have also considered the content of the posts on the Borough Green News website, in particular the post which referred to the meeting Councillor Taylor attended on 27 June 2014. In the post Councillor Taylor referred to Adrian Stanfield accusing him of using devious little tricks. The post also refers to Planning Officers stating *'Yes those Planning Officers, the ones who have been misleading and lying to us for the past 7 years.'*

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- 7.25 For the reasons set out in paragraph 7.21 above I also consider these comments to reasonably be regarded as bringing the authority in to disrepute. However, the potential impact of these comments is seriously compounded by the fact that the circulation was not limited to named individuals but posted on the internet with unlimited world wide access.
- 7.26 In reaching that conclusion, I have also had regard to Article 10 of the European Convention on Human Rights, which declares that everyone has the right to freedom of expression, including the right to hold opinions and to receive and impart information and ideas without interference by public authority. Though the exercise of such freedoms may be subject to legal restrictions those restrictions should only be what are strictly necessary. Comments on political matters or those of wider public interest should be accorded a high degree of protection unless they amount to mere personal abuse. In this case I consider Councillor Taylor's comments went beyond that which is acceptable and included personal abuse of Officers of the Council.

Bullying

- 7.27 Bullying and intimidation is referred to in the Standards Board Guidance on the Code issued in May 2007. It states on page 9 of the Guidance that:-

"Bullying may be characterized as offensive, intimidating, malicious, insulting or humiliating behaviour. Such behaviour may happen once or be part of a pattern of behaviour directed at a weaker person or person over whom you have some actual or perceived influence. Bullying behaviour attempts to undermine an individual or a group of individuals, is detrimental to their confidence and capability, and may adversely affect their health.

This can be contrasted with legitimate challenges which a member can make in challenging policy or scrutinizing performance."

- 7.28 There are two factors to consider in this case, first whether Councillor Taylor's behaviour was offensive, intimidating, malicious, insulting or humiliating. If it is considered that the behaviour falls into one or more of those categories then I must determine whether it was directed at a weaker person or a person over whom Councillor Taylor had an actual or perceived influence.
- 7.29 Having considered the content of the emails referred to throughout this report it is clear that some of the comments are offensive, insulting and humiliating. Publicly calling a person a liar and questioning an individual's competence in their job is all of these and appears to be intended to humiliate them by circulating those comments to other individuals.
- 7.30 I therefore conclude that the emails circulated by Councillor Taylor and the posts on his website included comments that were humiliating, insulting, intimidating and offensive.
- 7.31 Were these comments directed at individuals or groups of individuals who were weaker or who Councillor Taylor had an actual or perceived influence over? Councillor Taylor is a Member of the Borough Council that employs the Officers who have been subject to the comments in his emails. As such he is a representative of the employer. This is a fact which he referred to in interview when he stated *"They're not a company set up to do their own thing. They are employed by us to do what we want them to do."* I agree with

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Councillor Taylor that it is reasonable to hold the view that Councillors have an influence over the Officers employed by their authority. It therefore follows that I conclude Councillor Taylor did have an actual or perceived influence over those individuals who were subject to the comments in his emails and website posts.

- 7.32 In his comments on the draft version of this report, Councillor Taylor indicated that it was Officers and not he who held the position of power over him and his community. With respect to Councillor Taylor, this is a misinterpretation of the meaning of power in the context of bullying. That Councillor Taylor considers Council Officers to have power over decisions relating to Isles Quarry does not mean that he is powerless over them. As I have said above, as a Member of the Council he holds a position of power over all employees of the Council. In addition, by his conduct, he has sought to exert power over the Officers by the inappropriate language of his e-mail communications with them and his willingness to make accusations against them in a public website controlled by him.
- 7.33 I therefore conclude that Councillor Taylor's comments could be considered to be bullying of the Officers of the Council who were the subject of his humiliating, insulting, intimidating and offensive comments. I have concluded that this is a breach of the Code of Conduct

Conclusion

- 7.34 Councillor Taylor clearly has had deep and lasting concerns about the development of Isles Quarry West. It was reasonable for Councillor Taylor to raise these concerns through the appropriate channels both within the Council and with other organisations. It is also clear that when Councillor Taylor raised his concerns both within the Council and externally he did not receive the answers he wanted. At this point he adopted the practice of sending numerous emails most of which were copied widely to other Councillors, Parish Councillors and individuals outside the authorities. These emails contained comments which in Councillor Taylor's words were "as close to the mark" as he thought acceptable.
- 7.35 As explained above it is my conclusion that Councillor Taylor's judgement was flawed and in fact the comments far exceeded what might be regarded as acceptable even taking in to account Councillor Taylor's frustrations. The nature of Councillor Taylor's comments are further exacerbated by the fact that the comments were widely circulated in emails and posted on a website. The circulation of these comments to such a wide audience was disproportionate and unnecessary.
- 7.36 I have concluded that the comments made by Councillor Taylor showed a lack of good leadership as they were intended to belittle, insult and humiliate the Officers concerned. Such comments could reasonably be regarded as likely to bring the authority into disrepute. These comments also constitute a form of bullying both by their content and the fact that they were circulated to other individuals.
- 7.37 I therefore consider that Councillor Taylor has failed to comply with the Council's code of conduct in respect of the complaint.

8. Finding

- 8.1 My finding is that there has been a failure to comply with the code of conduct of the authority concerned.



Jonathan Goolden BA(Law) Solicitor
Investigating Officer

10th April 2015

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DECISION NOTICE
of Hearing Panel on 12 October 2015

Complaint dated 8 July 2014 relating to conduct of Councillor Francis Michael Taylor

- 1 On 12 October 2015, the Hearing Panel of the Joint Standards Committee of Tonbridge and Malling Borough Council ("TMBC") and all of the Parish Councils within the administrative area of TMBC considered a report of an investigation into the alleged conduct of Councillor Francis Michael Taylor ("Councillor Taylor"), a Member of Tonbridge and Malling Borough Council. A general summary of the complaint is set out below.

Complaint summary

- 2 Background: In January 2014 Councillor Taylor was elected to Tonbridge and Malling Borough Council (the Council) to represent the Borough Green and Long Mill Ward. This ward included the Isles Quarry Site, which Councillor Taylor had taken an interest in for a number of years. Councillor Taylor had consistently opposed the removal of the Isles Quarry Site from the Green Belt and its identification as a strategic development site. The Site was granted planning permission for residential development in June 2013.
- 3 During May and June 2014 Councillor Taylor sent numerous emails to Officers of the Council about aspects of the development at Isles Quarry West. Some of those emails contained comments which caused concern to the Officers. Councillor Taylor also posted information on a public website that repeated the comments which had caused concern.
- 4 Council Taylor's conduct in this matter caused concern for the Officers of the Council, including the Council's Monitoring Officer. Councillor Taylor was invited to a meeting with the Monitoring Officer and Chief Executive to discuss Councillor Taylor's conduct because of these concerns. That meeting took place on 27 June 2014. A comprehensive note of the meeting taken by Adrian Stanfield ("AS"), the Council's Monitoring Officer, is attached to the report of the Investigating Officer ("IO") and marked JTG2.
- 5 Following that meeting Councillor Taylor decided to refer himself to the Monitoring Officer by e-mail as it appeared to him that others considered his conduct to be in breach of the TMBC's Code of Conduct (see wording of e-mail at 6 below).
- 6 In an email dated 8 July 2014, sent to an extensive number of individuals and copied to the Council's Monitoring Officer, Chief Executive and others Councillor Taylor stated:

"At a recent meeting with Julie Beilby and Adrian Stanfield it was alleged that I had committed serious breaches of the Standards Code regarding "lack of respect and inappropriate comments and language to Council Officers", specifically Steve Humphrey and Lindsay Pearson.

Whilst I clearly take a different view, after some thought I realised that the code is more important than individual beliefs, and that justice must be seen to be done.

As a responsible member of this Authority, I am therefore formally reporting myself to the Monitoring Officer for the alleged breaches of the Standards Code."

- 7 The TMBC Code of Conduct does not contain an explicit requirement to treat others with respect. The Investigating Officer (IO) considered whether or not Councillor Mike Taylor may have failed to follow elements of TMBC's Code relating to bullying and disrepute which are set out below:

"General Obligations:
3(2) *You must not*

(a) bully any person...

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

Consultation with Independent Person

- 8 The Independent Person ("IP") raised the following matters:
- 8.1 The IP reminded the Panel that his views must be sought and taken into account under section 27(a) of the Localism Act 2011.
- 8.2 The allegation had been set out at paragraph 4.17 of the IO's report but the Investigating Officer had investigated a breach of paragraphs 3(2)a which referred to not bullying any person and 3(2) (f) which referred to behaviour which could reasonably be regarded as bringing the Councillor's office or the Authority into disrepute.
- 8.2.1 The IP referred to the meeting of 27 June 2014 and the notes made of that meeting by Councillor Taylor and found that no reference to bullying or disrepute had been made and that the only references made by the officers at that meeting were concerned with disrespect.
- 8.2.2 The IP believed that the substance of Councillor Taylor's self-referral was disrespect which was not an enforceable part of the TMBC Code of Conduct, it being solely inferred from the Nolan Principles. He indicated that disrespect needed to be an express obligation within the Code before a member could be found to be in breach of it.
- 8.3 The IP referred to emails being very important as they are contemporaneous with events and therefore carry more weight. He accepted that there was a previous history concerning planning matters and the issue of contamination between Councillor Taylor and the Council which had caused some conflict

and recognised that the fact that the site had been a landfill site would have been a very important matter. He indicated that Councillor Taylor believed that the Council was withholding information intentionally, but in his view, this was based on a misunderstanding by Councillor Taylor, in that Councillor Taylor believed that the obstruction survey which was supposed to be an attachment to an e mail was actually a survey plan and not a full blown report at all. He drew the Panel's attention to email 9 which confirmed that the obstruction survey which had been sent to Councillor Taylor was actually a plan and this had been relayed to Councillor Taylor by AS in that email: "003 Obstruction Survey [which] is quite different to the Ground Obstruction Report and is simply, as the name suggests, a survey plan." The IP referred to this misunderstanding by Councillor Taylor and him genuinely believing that he had been misled rather than actually having been misled by the Council.

8.4 In relation to the allegation of disrepute, the IP recognized that Councillor Taylor was raising matters with the best of intentions for the benefit of his community. He also referred to the difference between making rude comments to your equals and making rude comments to those officers not so senior within an organisation and referred to those higher up within an organisation being more able to hold their own.

8.5 In making an allegation of deception by officers to members of the public, the IP indicated that Councillor Taylor risked libelling officers.

8.6 The IP considered that the Panel should look at all of the emails as a whole and consider whether Councillor Taylor had raised matters in a proper manner, whether he got proper answers, and consider what effect (if any) his conduct had on members of the public. He indicated that if there was no reaction from the public, they had probably ignored the language used by Councillor Taylor. He referred to officers not knowing what reaction there had been to the emails and posts as they did not appear to have provoked any telephone calls or emails to the Council and there had not been any other complaints about the matter from the public. He suggested that if the emails had been ignored by the public they did not bring the Council into disrepute.

8.7 In relation to the bullying allegation the IP made the following representations:

8.7.1 The test for bullying was set out at paragraph 7.27 of the IO's report

"Bullying may be characterized as offensive, intimidating, malicious insulting or humiliating behaviour. Such behaviour may happen once or be part of a pattern of behaviour directed at a weaker person or person over whom you have some actual or perceived influence. Bullying behaviour attempts to undermine an individual or a group of individuals, is detrimental to their confidence and capability, and may adversely affect their health.

This can be contrasted with legitimate challenges which a member can make in challenging policy or scrutinizing performance".

The IP asserted that there were 3 elements in this test:

- (a) There being a weaker person (such as a secretary who may have overheard what was being said rather than actually being the subject of the behaviour);
- (b) Actual influence over the person being bullied; or
- (c) Perceived influence over that person.

The IP did not believe that Councillor Taylor had any power over the officers involved in this matter and concluded that there was no bullying. His reasons were:

- 8.7.2 In the meeting on the 27 June 2014 no reference was made to bullying by the officers present and in addition in the written statements made by the officers involved the language used by them did not suggest bullying.

The IP referred to the Statement of Steve Humphrey where he said "Sadly this did not seem to move matters forward demonstrated by the content of an email from Councillor Taylor later that day," he indicated that this did not sound like a person being bullied. (p 105)

He also referred to the statement of Lindsay Pearson at paragraphs 15, 16 and 17 (page 111) and further at paragraph 21 Lindsay Pearson described Councillor Taylor's behaviour as "rather sad and disappointing rather than more offensive." and the IP concluded that Lindsay Pearson did not appear to feel bullied. (p112)

- 8.7.3 The IP believed that the allegation against Councillor Taylor was a serious one but he did not feel that Councillor Taylor's conduct had, in the words used by the IO, "crossed the line" and he suggested that the Panel should not make any finding against Councillor Taylor unless they were fully satisfied that Councillor Taylor's behaviour had "crossed the line."

Findings

In the following paragraphs, any references to a page number or paragraph are a reference to pages or paragraphs within the Report of the Monitoring Officer dated 12 October 2015 unless otherwise stated.

After considering the reports of the Monitoring Officer and of the Investigating Officer and the submissions of the parties to the Hearing and the testimony of the witnesses (Julie Beilby, Adrian Stanfield and Steve Humphreys), and the views of the Independent Person, the Hearing Panel made the jurisdictional decision recorded in paragraph 48 of this notice below. The factual matters set out in the IO's report were not disputed and so the Panel broadly took those facts as read. They made the following findings:

Facts

- 9 Councillor Taylor was elected as ward member for Borough Green and Long Mill Ward in January 2014. This ward included within it the site known as Isles Quarry West ("IQW") (p47– paragraphs 5.1/5.3).

- 10 The Borough Council has adopted a Code of Conduct that includes provisions for its members to have due regard to the Nolan Principles, although these do not form part of the Code. Under the heading of "Leadership", these principles state that a Member should show leadership by promoting and supporting high standards of conduct and behaving in accordance with the Nolan principles when championing the interests of the Community. The Code requires Members to not bully any individual and not act in a manner that might bring the members' office or the Authority into disrepute (p47 – paragraph 5.2).
- 11 Councillor Taylor opposed the designation for Isles Quarry West as a strategic development site in the Core Strategy and Development Land Allocation under the LDF process (p108).
- 12 In June 2013 planning permission was granted for the residential development of IQW (p35 –paragraph 4.76).
- 13 Councillor Taylor has a long standing association with IQW having worked as a haulage contractor operating out of the quarry and also by virtue of his residence in the area. Councillor Taylor has taken a close interest in the site since the commencement of consideration of the area as a potential development site (p47 – paragraph 5.4)
- 14 For some time Councillor Taylor has been of the opinion that the designation of the site for development was not properly considered. He has made a number of complaints about the process and other matters relating to the development of the site (p47, paragraph 5.5) but no finding of wrong doing by the Council has been made during any of the investigations resulting from these complaints. (p.78 paragraph 4 of statement of Julie Beilby)
- 15 After Councillor Taylor's election to the Borough Council in January 2014 he took up his concerns over the development at IQW in his capacity as the Ward Member for the area. This involved numerous emails between him and various officers of the Council (p47 paragraph 5.7) which were sent by Councillor Taylor to those persons stated in the email address line and others (see 19 below). These emails are referenced in the schedule of emails at JTG10 (p.142) which are marked for reference purposes as emails 1, 2, 3, 4, 5, 6, 7, 11, 12 and 13 respectively. The content of these emails was not in dispute at the Hearing and Councillor Taylor confirmed that he had sent them.
- 16 Councillor Taylor also sent what he referred to as "Freedom of Information" ("FOI") requests to the Council in respect of documents relating to the planning permission for the IQW site. (p123 answer by Councillor Taylor). These were dealt with by the Council under the Environmental Information Regulations 2005 ("EIR") (p162 second paragraph). [For ease of reference the request for information made by Councillor Taylor on 6 March 2014 will be referred to in this decision notice as an FOI request notwithstanding the finding that it fell to be considered by officers under EIR.]

- 17 Councillor Taylor was dissatisfied with the information he received in response to his FOI request (p49 paragraph 6.1(b) additional submissions of Councillor Taylor numbered 4.28 4.29 and p50 additional submission numbered 4.96). Councillor Taylor threatened to make a complaint to the Information Commissioner about his dissatisfaction (p74 Note of Meeting of 27 June 2015 first paragraph), however no such complaint was made.
- 18 During May and June 2014 a number of the emails sent by Councillor Taylor to officers and members, which had also been copied to external bodies and to individuals, caused concern to senior officers at the Council due to their tone, content and manner of distribution. These included emails marked 2, 3, 4, 5, 6, 7, and 13 at JTG10 (page 142).
- 19 The table below sets out the distribution list of emails 2 to 7:

Email	Date	To
Email 2	20/05/14	Lindsay Pearson, Steve Humphrey and copied to Borough Green Parish Council ("BGPC") members
Email 3	30/05/14	Nicolas Heslop, Julie Beilby, and copied to Jennifer Wilson of the Environment Agency
Email 4	12/06/14	Lindsay Person, Steve Humphrey and copied to Russell Dawkins at Crest Tony Sayer of BGPC and all members of that Parish Council Jennifer Wilson of the Environment Agency
Email 5	13/06/14	Adrian Stanfield, Hazel Damiral and copied to all members of BGPC
Email 6	14/06/14	All members of TMBC and copied to Adrian Stanfield
Email 7	18/06/14	Adrian Stanfield, Nicolas Heslop and copied to Tim Shaw and members of the Parish Council

20. The emails included references to Council Officers:
- Being in the developers' pocket (19 May 2015 email from Councillor Taylor to Council Officers)
 - Lying and misleading Members (email 5) (email 6) (email 11)
 - Wasting public funds (email 7)
 - Not carrying out their duties properly (email 5) (email 7) and
 - Breaking the law (email 3) (email 4) (email 7)
- 21 Councillor Taylor ran a local news website under the name of "Borough Green News" ("BGN") which was hosted in America to which only he could post material. There was also a guest book for others to leave comments (p127).

- 22 Some of the allegations mentioned at 20 above were also posted on this website including officers:
- Being in the developers' pocket
 - Wasting public funds
 - Lying and withholding information
- (p172)
- 23 On 30 June 2014 Councillor Taylor posted a paragraph assessing Mr Stanfield's competence as a Solicitor on this open website and accusing him of using "devious little tricks" and stated that "in the future I [*Councillor Taylor*] will not meet with him [*Adrian Stanfield*] without a witness present I am too trusting by far" (p34).
- 24 Mr Stanfield was offended by these posts and considered them to be a direct personal attack which impugned his integrity as a Solicitor of the Senior Courts (p34).
- 25 Some of the emails directed to officers contained inappropriate language. An email dated 13 June was sent by Councillor Taylor to all members of TMBC in response to an email which Mr Stanfield had written to Councillor Taylor and his fellow ward colleagues and others to set out a summary of Counsel's advice which had been sought in view of the comments made by Councillor Taylor about the duties of the Council regarding remediation measures at the Isles Quarry West site.(p151 email 5)
- The inappropriate language used by Councillor Taylor in this email was "My first response to your email began with a b and ended cks".
- 26 Councillor Taylor stated in his interview with the IO that this comment was aimed at Adrian Stanfield.
- 27 Councillor Taylor recognised in interview that some of his emails questioned the integrity of senior officers and therefore the reputation of the Council (p43 paragraph 4.130), (p44 paragraph 4.141) (p45 paragraph 4.143) (p43 paragraph 4.135).
- 28 Councillor Taylor was invited to a meeting with senior officers of the Council, the purpose of which was to discuss his behaviour (27 June 2014).
- 29 The Council obtained an opinion from Counsel as a result of the concerns raised by Councillor Taylor regarding contamination remediation at Isles Quarry West which was circulated to Members of the Parish Council and TMBC.
- 30 Councillor Taylor accused AS of "biasing" the instructions to Counsel and misleading all members of the Council and of wasting public funds (p32 paragraphs 4.57 and 4.58) (emails and post on BGN web-site (p172 JTG12)).

- 31 AS found this email unacceptable as it inferred he was intending to mislead all members of the Council (paragraph 4.57).
- 32 Councillor Taylor accused AS of directly condoning an alleged illegal act (p33 paragraph 4.59) for withholding information requested under a Freedom of Information Act request by email on 18 June 2014 (email 7).
- 33 AS sent Councillor Taylor an email on 18 June (email 9) expressing strong concern about Councillor Taylor's emails of 12 June 2014 and 30 May 2014 and 20 May 2014 and 14 June 2014 (p161 email 9).
- 34 AS explained to Councillor Taylor the duties of a local authority in relation to information requested concerning environmental information under the Environmental Information Regulations 2005 ("EIR") in an email dated 18 June 2015 (p161 email 9):

"The Environmental Information Regulations 2005 (EIR) give rights to public access to environmental information held by public authorities. There are similarities between the two, but there are also important differences. Information requested relating to contamination would fall to be dealt with under EIR rather than FOI.

Under FOI, the information to be communicated to an applicant is the information held at the time of the request is received, except that account may be taken of any amendment or deletion made between that time and the time the information is communicated. The position with EIR is different, in that regulation 5(1) requires a public authority to make information that it holds available on request, and regulation 12(4)(a) provides an exception for information not held at the time the request is received. In either case, it is not possible to seek information that may or may not be held by a public authority at some unspecified point in the future".

- 35 AS confirmed in his email to Councillor Taylor that an obstruction report relating to IQW (which Councillor Taylor believed to have been withheld from him) was received by the Borough Council on 21 May 2014 in hard copy and 19 May 2014 by email which was 2 ½ months after the FOI request dated 6 March 2014 made by Councillor Taylor had been sent (email 9).
- 36 The actual obstruction report relating to IQW was sent to Councillor Taylor 16 days after it was received by the Borough Council (p 162 email 9, first paragraph).
- 37 AS warned Councillor Taylor about his conduct in an email dated 18 June 2014 in his position as Monitoring Officer at the Authority "It is unacceptable for any Councillor to make spurious and unfounded allegations against Officers. I cannot put it more simply than that" and he invited him to attend a meeting with the Chief Executive and Steve Humphrey to discuss the conduct issues (email 9).

- 38 At the meeting on 27 June 2014, in his capacity as Monitoring Officer, AS warned Councillor Taylor about his behaviour and advised him that there was a clear distinction between a grievance held by a member and the way that grievance was dealt with.

Findings

- 39 The Panel considered that Councillor Taylor was acting in his official capacity at the time of the conduct in question, and the TMBC Code of Conduct was therefore engaged.
- 39.1 In coming to this decision it had regard to paragraphs 7.1 to 7.3 of the IO's report and his conclusion at paragraph 7.4 that Councillor Taylor was acting in his official capacity. The Panel agreed with both the reasoning of the IO and the conclusion and found that Councillor Taylor was acting in his official capacity in sending the emails and making posts on BGN website, (identified at paragraph 15 above and JTG12 (p.172-173)).
- 40 The Panel found that Councillor Taylor breached paragraph 3(2)(f) of the TMBC Code of Conduct, namely:

"You must not conduct yourself in a manner which would reasonably be regarded as bringing your office or the Authority into disrepute."

- 40.1 The Panel found that it was right and proper that members should raise concerns about the implementation of development within their ward and also to challenge the actions of officers of the Council in a robust manner. There was nonetheless a clear distinction between matters being raised in the correct forum using appropriate terms and the tone and the manner in which those matters were pursued.

By way of example as to the correct forum for raising matters, in relation to the FOI request made by Councillor Taylor, it was evident that Councillor Taylor was dissatisfied with the Council's response. The Panel believed that he could have made a complaint to the Information Commission rather than making unsubstantiated allegations relating to withholding information and breaking the law. The Panel noted that the Independent Person in his representations to the Panel was of the view that Councillor Taylor's allegations relating to the FOI request and withholding information (and by inference to this also his statements concerning officers breaking the law) were based on a mistake. The Panel agreed that there was no foundation to these allegations. (Finding of fact numbered 34, 35, and 36 above).

- 40.2 In reaching the conclusion that the TMBC Code of Conduct was breached the Panel considered the test set out by the IO at paragraphs 7.5 to 7.7 of his report (p53-54) and whether the conduct of Councillor Taylor could reasonably be regarded as tarnishing the reputation of the Authority and thereby bringing the Authority into disrepute.

- 40.3 The Panel considered the test to be an objective one as to whether Councillor Taylor's conduct could cause the reputation of the Authority to suffer in the mind of a reasonable person, and therefore bring the Authority into disrepute.
- 40.4 The Panel considered that taken in isolation some of the emails by themselves may not have led to a breach of the Code, and in the words of the IO "crossed the line" into unacceptable behaviour, but taken in totality and due to the wide circulation of the emails to external bodies and people and their content, the offending parts of which are set out at paras 7.9, 7.11, 7.13, 7.15, 7.17, 7.19 and 7.20 of the IO's report (p 54-55) this amounted to a breach of paragraph 3(2)(f) of the TMBC Code of Conduct as it was behaviour which could reasonably be regarded as bringing the Authority into disrepute by tarnishing its reputation.
- 40.5 It was further noted by the Panel that Councillor Taylor had acknowledged that his comments could be considered as an attack on the integrity of officers and the Council and that this could affect the reputation of the Council (p56 paragraph 7.21 and answers given by Councillor Taylor in his interview with the IO at p121, 124 and 128).
- 40.6 The Panel also considered the representation made by the IP on this point that there was no evidence to suggest that the reputation of the Council had been tarnished as no complaints appeared to have been received about the Council's behaviour in this respect. The Panel found that the test to be applied was not whether in fact the reputation of the Council had been damaged, but whether the member had conducted himself in a manner which "could reasonably be regarded as bringing" [his] "office or the Authority into disrepute" and it found that he had done so.
- 40.7 With regard to the Posts on BGN (website) the Panel were particularly concerned that these were not limited to circulation to named persons but had unlimited worldwide circulation and therefore the ability to extend the remit of those who may believe that the allegations made were true therefore potentially adversely affecting the reputation of the Council.
- 40.8 The Panel had no hesitation in finding that the emails and posts referred to amounted to a breach of Paragraph 3(2)(f) of the TMBC adopted Code of Conduct.
- 40.9 In coming to its conclusion the Panel also had regard to paragraph 7.26 of the IO's report dealing with Article 10 of the European Convention on Human Rights ("ECHR") and the advice of the legal advisor to the Panel.

The Panel consider that on the facts it was entitled to find a breach of the Code and that this was an imposition on Councillor Taylor's right to freedom of expression. It noted that usually political expression was afforded a very high level of protection under the ECHR, but that where comments made involved the personal abuse of officers, as in this case (see paragraph 20, 22, 23, 27, 30, 32 of the findings of fact above), the imposition of a restriction on that right was a justified interference in order for the protection of the reputation or the

rights of others (namely the officers of the Council referred to in those emails and post on BGN website).

41 In relation to the allegation concerning paragraph 3(2)(a) of the Code

"You must not(a) bully any person"

The Panel found that the Code had not been breached. Whilst the Panel took into account the view of the IP and the fact that none of the officers in giving evidence felt that they had been bullied it found that had the officers felt bullied, a different decision may have been made.

- 41.1 The Panel disagreed with part of the representations of the IP in relation to bullying and found that it was possible for a single Member to bully an officer of the Council. The Panel agreed with the reasoning and conclusions of the IO at paragraph 7.31 of his report and that Councillor Taylor was in a position of "actual or perceived influence" over the officers of the Council. The panel accepted the test put forward by the IO in relation to this point at paragraph 7.28 (p57) of his report where he referred to the two factors to be considered in relation to bullying. The second of these being whether the behaviour in question:

"...was directed at a weaker person or a person over whom Councillor Taylor had an actual or perceived influence".

They found that this part of the test was satisfied but that the first part of the test was not as the Officers concerned had not felt bullied.

The overall test for bullying had not been satisfied on the facts and the Panel therefore found that there was no breach of the Code relating to bullying.

- 41.2 The Panel expressed the view that had the behaviour in question been directed at less senior officers they would be very likely to have come to a different conclusion. The Panel noted that the behaviour in question had the essence of "bullying" about it, but they had to also consider its effect on the persons to whom it was directed. In this case, because the officers concerned did not feel bullied the test for bullying had not been made out on the facts.

- 42 In considering the representation of the IP in paragraph 8.2, the Panel found that the term disrespect or disrespectful behaviour could apply to behaviour which brought the Councillor's office or the Authority into disrepute and often behaviour may fall to be considered under more than one provision in the Code of Conduct. The Panel noted that the terms disrespect and disrepute were not necessarily mutually exclusive of each other.

- 42.1 The TMBC Code of Conduct did not have disrespect as an enforceable obligation, as it was within the Nolan Principles which cannot be enforced by way of a complaint. Nonetheless the Panel considered that Councillor Taylor's behaviour was disrespectful, and whilst this was not within the TMBC Code in itself, it was also behaviour which could reasonably be said to have

the effect of bringing the Councillor's office or the Authority into disrepute or could amount to bullying which are both breaches of the Code of Conduct.

- 42.2 The Panel considered the breaches of the Code set out in the IO's report at paragraph 4.18, relating to "bullying and disrepute" and agreed with the conclusion of the IO at paragraph 4.23 of his report for the reasons stated. Whilst the cases referred to were recognised by the Panel as being only guidance to the Panel, they were guidance which the IO and the Panel was properly entitled to take into account. The panel concurred with the view of the IO that "One set of facts can and often does involve more than one breach of the Code."

Sanctions applied

Before considering whether it was appropriate to impose any sanction, the Panel heard submissions from the Deputy Monitoring Officer and the Subject Member. The Independent Person was consulted, but did not wish to provide any representations with regard to sanctions but did make some comments which are summarised below at paragraph 45.

- 43 The representations of the Deputy Monitoring Officer were made available in writing after the Hearing and have been annexed to this decision notice for ease of reference.
- 44 Councillor Taylor thanked the Panel for taking a long time in deliberation and considering the matter properly and indicated that he had been reading the seven principles of public life whilst the Panel had been deliberating. He believed that he had upheld them. He made reference to the substantial majority of the votes which he obtained when he was elected as a Borough Councillor and felt that this reflected that the people who had voted for him believed that he was doing his job which he believed included holding officers to account.
- 44.1 In relation to censure and his removal from Area 2 Planning Committee and the other sanctions imposed he was not unhappy but viewed his removal from the Area 2 Planning Committee as hurting the people of Borough Green.
- 45 Whilst the IP did not make any recommendations on the sanctions to be imposed he pointed out that there was no question of suspension of Councillor Taylor as a Councillor within the TMBC arrangements.
- 45.1 The IP believed that Councillor Taylor had good standing with his local constituents.
- 45.2 The IP referred to an article in the Sevenoaks Chronicle dated 7 July 2014 which was after the meeting held on 27 June 2014 to discuss Councillor Taylor's behaviour towards officers. This, he said, referred to Councillor Taylor contacting officers when he suspected that work had been undertaken at IQW without the relevant planning permissions being in place. The Council acted upon that notification and work was stopped until the planning breach

had been rectified. The IP indicated that Councillor Taylor was still doing his duty as a Councillor after his conduct had been called into question.

The Hearing Panel imposed the following sanctions

- 46 The Panel have determined it is appropriate to impose four sanctions in respect of the breach of the TMBC Code of Conduct in this case:
 - 46.1 Recommending to Council that Councillor Taylor be issued with a formal censure by Members;
 - 46.2 Recommending to Council that Councillor Taylor be removed from Area 2 Planning Committee until the end of April 2017 (or any successor thereof) with effect *immediately from when that decision is properly made under the Council's constitutional rules; [* this point being clarified after a question raised by Councillor Taylor regarding the sanctions at the Hearing and when they would take effect]
 - 46.3 Recommending to Council that they issue a press release;
 - 46.4 Publishing its findings in respect of Councillor Taylor's conduct on the Council's website.
- 47 The following reasons apply to the recommendations of the Panel.
 - 47.1 The recommendations were within the possible range of recommendations which the Panel was entitled to make as they were fair and proportionate and were within the Adopted Arrangements at paragraph 4(a),(b), (k) and (l) respectively of the Hearing Panel Procedure which set out the possible range of sanctions.
 - 47.2 The Panel looked at the questions within the Council's Adopted Arrangements in paragraph 4.4 of the Hearing Panel Procedure in coming to this decision:
 - (a) *What was the Subject Member's intention and did they know that they were failing to follow the Borough Council's Code of Conduct.*

The Panel considered that Councillor Taylor did intend to call the integrity of officers of the Council into disrepute as he had given evidence to that effect and by reason of that should have known that this could have an effect on the reputation of the Council. The Panel agreed with the representation of the Deputy MO on this point.

(b) Did the subject member receive advice from officers before the incident and was that advice acted on in good faith?

The Panel did not find that relevant training had been given before the incidents in question (submissions of Deputy MO attached to Decision notice on page 2) but recognised that since the allegations had been made Councillor Taylor had been trained on the Code of Conduct in a meeting on

1 July 2015 and therefore training was not considered as a relevant sanction as he had now been trained.

The Panel noted that attempts were made to advise Councillor Taylor about his conduct by senior officers in the meeting on 27 June 2014 but that these were not taken well and Councillor Taylor still carried on with the offending behaviour as set out by the Deputy MO in his submissions where he referred to the post made on BGN website by Councillor Taylor relating to AS's behaviour as allegedly amounting to "little devious tricks".

(c) Has there been a breach of trust.

The Panel considered the representation made by the Deputy MO on this point and agreed that there was a loss of trust between Councillor Taylor and the three senior officers who gave evidence to the Hearing. It agreed that due to the senior positions of these officers and Councillor Taylor seeking to impugn their character in a very public manner to a very wide audience that there had been a breach of trust.

(d) Has there been financial impropriety?

The Panel did not believe there was any allegation or evidence of financial impropriety.

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

The impact of the Conduct was that senior professional officers had been publicly accused of lying which could affect their personal and professional reputation and by implication that of the Council. This was compounded by the accusations being made on a website with world-wide circulation.

(f) How serious was the incident?

The incident was very serious as the comments and accusations which were made by Councillor Taylor were very widely circulated, potentially to a world-wide audience and were not substantiated and proven in the emails and posts which were made and could therefore have brought the Council into disrepute in the minds of a very wide audience. The Panel found this to be especially relevant given the previous very good reputation of the Council as demonstrated by Julie Beilby in her statement.

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

Councillor Taylor's comments during interview and his representations made to the Panel in the hearing clearly demonstrated that he believed that his conduct was justified. The Panel noted that the IO and officers giving evidence to the hearing all believed that Councillor Taylor genuinely believed that he had been lied to and misled by officers and the Council over planning matters at IQW but that he did not accept that he was at fault.

(h) Did the Subject Member apologise to the relevant persons?

Councillor Taylor did not apologise and the Panel were of the view that he would not do so given his firm belief that he was in the right.

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

No.

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

No

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

The Panel took into account both the representations made on this point by the Deputy MO and the evidence before the Hearing and in particular the testimony of Councillor Taylor himself and believed that it would be very likely that the offending behaviour would be repeated as Councillor Taylor believed that his behaviour was justified and referred to it as being acceptable when interviewed by the IO.

- 47.3 The Panel considered that the sanctions which they imposed were relevant and proportionate to Councillor Taylor's conduct as he had brought the Council into disrepute through his actions and widely circulated his emails and posts and it was right that the findings against Councillor Taylor should be widely circulated to redress the damage which may have been caused to the Council's reputation and that of its senior officers
- 47.4 In particular the Panel was of the view that Councillor Taylor's removal from the Area 2 Planning Committee (or its successor) was proportionate as the breach found was a very serious one, impugning the reputation of both senior officers and the Council by association which related to planning matters and that the sanction was therefore both relevant and commensurate with the gravity of the conduct by Councillor Taylor.
- 47.5 In relation to the representation made by Councillor Taylor regarding his removal from Area 2 Planning Committee or any successor to it until the end of April 2017 the Panel noted that there are 2 other members who represent Borough Green and Longmill who could represent the ward on behalf of members of the public.
- 47.6 The Panel also took into account Councillor Taylor's right to freedom of expression as set out in article 10 of the European Convention on Human Rights ("ECHR") as they were advised that the imposition of a sanction can interfere with that right.

- 47.6.1 The Panel found that whilst an individual was able to hold opinions and receive and impart information and ideas without any interference by public authority, Article 10(2) of the ECHR provided for the circumstances where such rights can be interfered with (which are fully set out in the representations of the Deputy MO). This included such "restrictions or penalties as are prescribed by law and are necessary in a democratic society...for the protection of the reputation or rights of others."
- 47.6.2 Case-law which was referred to by the Deputy MO in his representations on sanctions established that public officials should be free to carry out their duties "free of perturbation if they are to be successful in performing their tasks and it may therefore prove necessary to protect them from offensive and abusive verbal attacks when on duty."
- 47.6.3 The Panel believed that they were entitled to impose a sanction in view of Councillor Taylor's conduct and that this amounted to a breach of his freedom of expression under article 10(1) but that given that the emails sent by Councillor Taylor and the posts made by him included personal attacks on the integrity of officers of the Council, that this interference was justified "in a democratic society for the protection of the reputation or right of others", those others in this case being the senior officers who had been impugned by his actions. The Panel found that the higher degree of protection which was normally afforded to political expression should not apply in this instance as Councillor Taylor's conduct amounted to a personal attack on public officials carrying out their duties and was a personal attack on their integrity.

Findings on Jurisdictional matters:

The Panel made two jurisdictional decisions at the Hearing:

48. It considered the report of the Deputy MO in the papers and in particular paragraph 1.1.4 c) of that report which requested the Panel to consider whether to exercise its discretion in rule 14.1 of the TMBC adopted arrangements for dealing with Code of Conduct Complaints under the Localism Act 2011 (p 183-212) ("the Adopted Arrangements") to allow Mr Dolton to appear before the Hearing in the place of Mr Goolden and present the report of the Investigating Officer as Mr Goolden was unable to attend.

Rule 14.1: "The Borough Council...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."

The Panel considered the test in paragraph 14.1 of the Adopted Arrangements and found that it was expedient to secure the effective and fair consideration of the allegation against Councillor Taylor to carry on with the Hearing today with Mr Dolton representing the IO. In coming to its decision the Panel noted that neither they nor the Subject Member, Councillor Taylor,

wished to ask any questions of Mr Goolden and that Councillor Taylor had stated that he was happy to proceed with Mr Dolton taking the place of Mr Goolden at the Hearing.

The Panel also considered that Mr Dolton had carried out all of the interviews with the witnesses in this matter and was sufficiently close to the case to be able to act competently in the place of Mr Goolden. They noted that whilst Mr Dolton was not legally qualified that the Panel had the assistance of a legal advisor relating to points of law which may arise. They came to the conclusion that in all of these circumstances further delay in hearing the complaints against Councillor Taylor, to allow Mr Goolden to attend, would not be in the public or Councillor Taylor's interest. The Panel exercised their discretion to allow the Mr Dolton to appear before the Panel in the place of Mr Goolden and Mr Dolton was subsequently referred to as the IO.

49. Councillor Taylor sought to introduce written material before the Hearing which no one had the opportunity to look at prior to the Hearing. The legal advisor and MO raised the point that the Panel could allow this new material to be heard at the Hearing if the Panel exercised its discretion under rule 14.1 set out above in paragraph 48. A copy of the material in question was given to each of the Panel members, the legal advisor, the IP and the IO and Monitoring Officer.

The Panel retired and looked at the material which Councillor Taylor sought to introduce at the Hearing which related to matters going back to the adoption of the Local Plan by Borough Green Parish Council and the planning history of the IQW site. It found that it was fair and expedient to allow Councillor Taylor to present this material when he was putting his case to the Hearing but that as it related to matters which long preceded Councillor Taylor's membership of the Borough Council in January 2014, it could only be relevant to the reasons why Councillor Taylor acted as he did and not to the fact finding part of the proceedings as to whether there was conduct which amounted to a breach of the TMBC Code of Conduct.

The material which Councillor Taylor sought to introduce was relevant to the reasons why Councillor Taylor felt compelled to challenge officers and to use the language he had used in emails and posts concerning Council officers and departments within the Council. The Panel agreed to admit the material at the fact finding part of the Hearing albeit that it was done so on the strict basis that it amounted to mitigation should Councillor Taylor be found to have breached the Code of Conduct, which had not at this point in the proceedings yet been found to have occurred. The Panel were prepared to allow it to be referred to at this point in order that Councillor Taylor would continue to be engaged with the process at the Hearing to secure the effective and fair consideration of the reasons why Councillor Taylor acted as he did.

The Panel noted that the fact finding part of the Hearing was concerned with Councillor Taylor's conduct as a Borough Councillor since January 2014 and the inclusion of this material was only relevant to motive. This point had been dealt with in the report of the Deputy MO at paragraphs 1.1.8 to 1.1.10 (p8).

In coming to their decision the Panel also noted that Councillor Taylor had been told by the IO that the investigation and case would not look beyond his behaviour as a Councillor:

"I think it's very important that we have a context for this interview and meeting and I felt it very relevant that you gave your perspective, as you have done, on the background of the Isles Quarry development from when it first started to today. Erm, but I now have to emphasise to you that our role and my role within this is to gather and consider evidence and facts relating purely to your behaviour whilst interacting with those officers and then indeed our firm will advise the Council, by a report, whether in our opinion, that does or does not breach the Code of Conduct and I want to emphasise that we will not be conducting investigations into the actions of the Council or any officers within the Council or historic actions of officers that used to be in the Council relating to the actual planning application, planning process. I just want to make that clear for the record."

Councillor Taylor responded:

"Well I appreciate that this investigation is purely about my statement about Planning Officers. But what I have found and I will admit I have gone as close to the line of beach of the code as I can, because the only way to get any response ... is to kick hard and keep kicking."

The Panel note that Councillor Taylor was aware that the investigation would not be into matters which pre-dated his membership of the Council. They allowed the papers to be submitted in the fact finding part of the meeting but only on the basis that they are relevant to the reasons why Councillor Taylor felt that he had to act as he did. They were permitted to be presented as mitigation should the Panel find there was a breach of the Code or Conduct at the relevant time in the meeting. The papers did not relate to conduct by Councillor Taylor when he was an elected member of the Council and therefore no finding of fact was made on them.

The Hearing Panel did not make any further recommendation(s)

Appeal

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

Notification of decision

This decision notice is sent to the:

- Councillor Taylor
- Complainant – Councillor Taylor

Additional help

If you need additional support in relation to this decision notice or future contact with the Borough 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 contact our Customer Services on 01732 844522 or email customer.services@tmbc.gov.uk. We welcome calls via Typetalk.

Signed:



Date

Print name:

JANET SERGHIN

Chairman of the Hearing Panel

Tonbridge and Malling Borough Council

IN THE MATTER OF THE LOCALISM ACT 2011

STANDARDS HEARING PANEL RE: COUNCILLOR MIKE TAYLOR

REPRESENTATIONS OF THE DEPUTY MONITORING OFFICER ON THE APPLICATION OF SANCTIONS

I have three headings under which I would like to address the panel:

- The questions which the panel must consider, according to paragraph 4.1 of the Hearing Procedure at Annex 4 of the Arrangements
- The Right to Freedom of Expression, and in particular Political Expression
- Sanctions

The Questions which the Panel must address

Under the Hearing Procedure, the Panel is required to consider a series of questions, a to k, and in addition any other relevant circumstances or other factors specific to the local environment.

I will briefly touch upon each of those questions in order to draw to your attention those facts which have been established which are of particular relevance to each question:

- (a) What was the subject member's intention and did they know they were failing to follow the Borough Code of Conduct?

According to the report of Jonathan Goolden, at paragraph 7.29 "publicly calling a person a liar and questioning an individual's competence in their job... appears to be intended to humiliate them by circulating those comments to other individuals."

There are a number of instances throughout the course of conduct complained of where comments of this nature are circulated either to a wider audience of PC and/or BC members, and in some occasions, indiscriminately and globally by way of publication on a publicly accessible website.

In particular, I highlight two comments levelled at Adrian Stanfield: (i) an email to all BC members on 14 June 2014 stating that "Adrian's email/ Counsel's opinion is intended to mislead rather than inform" and (ii) a comment, posted on Cllr Taylor's "Borough Green News" website that Mr Stanfield had employed "little devious tricks".

In my submission, these comments clearly call into question Mr Stanfield's professional standing as a Solicitor and it was clearly Cllr Taylor's intention, as set out in the transcript of his interview at page 68 of the Schedule of Evidence, to "challenge the integrity of the senior solicitor".

The intemperate nature of the language used, and Cllr Taylor's confirmation in interview, demonstrates that his intention was to impugn the standing of the senior officers, in front of the members of the Council and BG Parish Council, and the wider public in those instances where the exchanges were subsequently published on his website.

Whilst Cllr Taylor maintains that he believed he was justified in taking the approach that he did, and believes he was the "right side of the line" in relation to the Code of Conduct, in my submission no reasonable person in Cllr Taylor's position could have thought they were complying with the code of the conduct when making these accusations in such a public manner.

(b) Did the subject member receive advice from officers before the incident and was that advice acted on in good faith?

Cllr Taylor received training on bias and predetermination from the MO on 6 March 2014. However I am not aware that Cllr Taylor received any general training on the Code of Conduct, nor is this generally offered. Cllr Taylor is, however, an experienced Parish Council member and would have been aware of and familiar with acting under a member code of conduct.

The "offending" behaviour, however, continued beyond the 27th June meeting with the MO- the "little devious tricks" comment appearing on the BG News website on 30 June. It therefore seems apparent that Cllr Taylor did not act to change his behaviour even after the MO had taken steps to ensure Cllr Taylor was aware that his behaviour was not acceptable.

(c) Has there been a breach of trust?

It is apparent that Cllr Taylor has a difficult relationship with a number of the senior officers of the Council, in particular Steve Humphrey, Adrian Stanfield and Julie Bielby. Lindsay Pearson has now retired so any difficulty there is no longer relevant.

There appears to have been no loss of trust with other officers within the Council, and this is demonstrated to some extent by the email exchange with Glenda Egerton on 25 June at page 107 of the Schedule of Evidence and his explanation at pages 71 and 72 of the Schedule of Evidence.

Cllr Taylor characterises his relationship with officers generally as a good relationship, but at times "robust" (Interview, p58 of the Schedule of Evidence). However, it is clear that there is a loss of trust between Cllr Taylor and the three senior officers who have given evidence today. Given the very senior positions of the officers who Cllr Taylor has sought to impugn, and that this was done in a very public manner, I can only conclude that there has been a breach of trust.

(d) Has there been financial impropriety?

There is no allegation or evidence of any financial impropriety by Cllr Taylor.

(e) What was the result of failing to follow the code?

- *Cllr Taylor has publicly accused senior officers, including the Council's most senior solicitor, of lying*
- *These accusations were made to a global audience*
- *Such comments damage the reputation of the Council*
- *Comments of this nature also damage the reputation of Councillors generally*

(f) How serious was the incident?

Given the identity of the officers subject to Cllr Taylor's comments, and the very public nature by which his allegations were made, the incident must be characterised as being particularly serious.

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

It is clear that Cllr Taylor believes his course of action was justified under the circumstances, and therefore does not accept that he is at fault.

(h) Did the Subject Member apologise to the relevant persons?

CLlr Taylor has already indicated that he will not apologise for his conduct.

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

No.

(j) Has the Subject Member previously breached the Borough Council's code of Conduct?

No.

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

As the Subject Member has indicated a number of times, he believes that his conduct is "acceptable" and "justified" because of the way he feels he has been treated by officers of the Council. He says "respect needs to be earned" and as he sees it, the senior officers concerned have not earned that respect.

Even after being warned that his conduct was unacceptable, the conduct continued. Therefore there is a real risk that there could be further incidents of this nature.

The Right to Freedom of Political Expression

It is established through case law that imposing sanctions on a member can engage the Right to Freedom of Expression under Article 10 of the Convention on Human Rights. It is therefore necessary for the Panel to consider whether Article 10 is engaged in this case and if so, whether any interference is justified under the terms expressed in the HRA and Convention.

I will therefore need to make some rather technical submissions to you now regarding the law in this area. I apologise in advance that this is both technical and lengthy- but your legal adviser should be able to provide further guidance and this forms an important part of your consideration today.

I will begin by setting out the law, both in the Convention on Human Rights and as established through both European and British jurisprudence. I will then apply the law to the present circumstances in order to present you with my conclusions on how Art 10 impacts upon this case.

The right, according to Article 10(1) *"shall include the freedom to hold opinions and to receive and impart information and ideas without interference by public authority..."*

Art 10(2) provides the circumstances where such rights can be interfered with. It says that *"the exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society... for (inter alia) the protection of the reputation or rights of others."*

Under the European jurisprudence, the ECHR has said that *"while freedom of expression is important for everybody, it is especially so for an elected representative of the people..."*

The British Courts have also said that, when considering justification for interference under Article 10(2), "political expression" or "the expression of a political view" attract a higher degree of protection, whilst expressions in personal or abusive terms do not attract the same higher level of protection.

The ECHR draws a distinction between political expression and criticism of civil servants, which by extension must in my submission also apply to Council Officers exercising their official duties. In its judgement in *Janowski v Poland*, the Court said that:

"...It cannot be said that civil servants knowingly lay themselves open to close scrutiny of their every word and deed to the extent to which politicians do and should therefore be treated on an equal footing with the latter when it comes to the criticism of their actions. What is more, civil servants must enjoy public confidence in conditions free of undue perturbation if they are to be successful in performing their tasks and it may therefore prove necessary to protect them from offensive and abusive verbal attacks when on duty..."

In considering whether a finding that a member has breached a code of conduct and/or any sanction imposed had contravened article 10, the Courts have established that there are 3 questions to be asked:

- (1) Was the tribunal entitled as a matter of fact to conclude that the Cllr's conduct was in breach of the Code;
- (2) If so, was the finding in itself, or the imposition of a sanction prima facie a breach of article 10; and
- (3) If so, was the restriction involved one which was justified by reason of the requirements of article 10(2)

Turning to the facts of this case, on question (1), it can clearly be said on the evidence that the Panel in this case is entitled, as a matter of fact, to conclude that Cllr Taylor was in breach of the code in the manner already set out.

As to question (2), that finding is, prima facie a breach of Cllr Taylor's Freedom of Expression. In essence, by saying he has breached the code by writing the emails and posting the website comments, the Council is interfering with Cllr Taylor's right to impart information and ideas.

The third question therefore falls to be considered: firstly, to the finding of a breach, and second to any sanction.

In my submission, whilst general criticism of the Council (and to a lesser degree officers of the Council) could be said to be the expression of a political view thus attracting a higher degree of protection from interference, the same cannot be said of personal comments, such as "little devious tricks", "you lot in the Developer's pocket" and referring to an email from Mr Stanfield, publicly, as "bollocks". In my view such comments do not attract that higher level of protection under Article 10.

Furthermore, the ECHR says that officials should be protected from such attacks, in other words that in order to allow an officer to do his job properly it may be more justifiable under Article 10(2) to restrict someone else's freedom to impart information and ideas, in this case, Cllr Taylor's.

In my submission therefore, the Panel is justified in interfering with Cllr Taylor's right to freedom of expression, by its finding of a breach, as that interference is necessary in a democratic society for the protection of the reputation or rights of others.

That third question also needs to be considered in relation to any sanction which the Panel might impose, and I turn now to those sanctions.

Sanctions

[IF BULLYING...:

Cllr Taylor's conduct has been found to fall well below the standard expected of a member. He has sought to intimidate and insult senior officers of the Council, in a concerted and public campaign against them. This cannot be considered as anything other than a very serious matter.

[IF DISREPUTE]

Cllr Taylor has called into question the integrity of the Council's senior officers in a public manner. Furthermore, he has impugned the professional standing of the Council's senior solicitor.

These are serious issues which clearly bring both the Council and Cllr Taylor's own office into disrepute.]

When advised about his conduct, Cllr Taylor considered this as "an attempt to silence him" and instead of heeding the advice, continued the offending behaviour.

Cllr Taylor appears to take some satisfaction in behaving in this manner, and it seems to be a matter of some pride from the tone of posts on his website, that his conduct has been under investigation.

Regardless of what Cllr Taylor believes might "justify" such behaviour, there are standards of conduct which are required of members, even in those circumstances.

Cllr Taylor has received advice on his conduct and it seems apparent that he has not and will not act on that advice. I do not, therefore, recommend training.

In my submission, the matter is not suitable for informal resolution.

Cllr Taylor has already indicated that he will not apologise, and therefore this is not available as part of the range of sanctions should the matter be considered appropriate for informal resolution.

I recommend, in the first instance, that a formal censure should be issued by the Council, reprimanding Cllr Taylor for his behaviour. In my submission this is proportionate and justified in the terms of Article 10(2) of the Convention.

The Council needs to make clear, in a public manner such that those who read or may read the BG News website will also be aware that the posts they have read, were inappropriate and constituted a breach of the members code of conduct. Therefore I also recommend that the findings of the Panel are published on the Council's website, and a press release is issued.

Cllr Taylor sits on two committees- Licensing and Appeals, and Area 2 Planning Committee. The offending behaviour arises directly from planning issues.

The Panel needs to consider whether, in light of the very serious nature of the breaches of the code, it is appropriate for Cllr Taylor to continue to sit on these committees. It is open to the Panel to recommend to Full Council that Cllr Taylor be removed from either one or both of these committees.

I have considered at length whether my representations to the Panel should advocate imposing such a sanction. However, on balance I have decided not to seek to influence the Panel in either direction. Instead, I ask the panel to consider the following 3 points as to whether the sanction is appropriate in this case:

- In light of the nature of the comments made by Cllr Taylor, and who they were made against, is any other sanction sufficiently punitive?
- Would any other sanction be effective in correcting the offending behaviour or sending the "right message" about serious breaches of the code?
- Given that the background to Cllr Taylor's comments about the officers stem from planning issues, is it appropriate for Cllr Taylor to continue to sit on that committee and be a decision maker in respect of planning matters?

In addition, the Panel must again give careful consideration whether imposing such a penalty and restriction on Cllr Taylor's political activity is justified in the terms of Article 10(2) of the Convention.

IN THE MATTER OF THE LOCALISM ACT 2011

STANDARDS HEARING PANEL RE: COUNCILLOR MIKE TAYLOR

LEGAL SUBMISSIONS ON THE RIGHT TO FREEDOM OF EXPRESSION UNDER ARTICLE 10 OF THE CONVENTION ON HUMAN RIGHTS

It is established through case law that imposing sanctions on a member can engage the Right to Freedom of Expression under Article 10 of the Convention on Human Rights. It is therefore necessary for the Panel to consider whether Article 10 is engaged in this case and if so, whether any interference is justified under the terms expressed in the HRA and Convention.

The right, according to Article 10(1) *"shall include the freedom to hold opinions and to receive and impart information and ideas without interference by public authority..."*

Art 10(2) provides the circumstances where such rights can be interfered with. It says that *"the exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society... for (inter alia) the protection of the reputation or rights of others."*

Under the European jurisprudence, the ECHR has said that *"while freedom of expression is important for everybody, it is especially so for an elected representative of the people..."*¹

The British Courts have also said that, when considering justification for interference under Article 10(2), "political expression" or "the expression of a political view" attract a higher degree of protection, whilst expressions in personal or abusive terms do not attract the same higher level of protection.²

The ECHR draws a distinction between political expression and criticism of civil servants, which by extension must in my submission also apply to Council Officers exercising their official duties. In its judgement in *Janowski v Poland*³, the Court said that:

"...It cannot be said that civil servants knowingly lay themselves open to close scrutiny of their every word and deed to the extent to which politicians do and should therefore be treated on an equal footing with the latter when it comes to the criticism of their actions. What is more, civil servants must enjoy public confidence in conditions free of undue perturbation if they are to be successful in performing their tasks and it may therefore prove necessary to protect them from offensive and abusive verbal attacks when on duty..."

In considering whether a finding that a member has breached a code of conduct and/or any sanction imposed had contravened article 10, the Courts have established⁴ that there are 3 questions to be asked:

- (1) Was the tribunal entitled as a matter of fact to conclude that the Cllr's conduct was in breach of the Code;

¹ *Castells v Spain* (1992) 14 EHRR 445

² *R (Dennehy) v London Borough of Ealing* [2013] EWHC 4102 at para 24

³ ECHR Judgement, January 21, 1999

⁴ *Sanders v Kingston (No.1)* [2005] EWHC 1145 (Admin)

- (2) If so, was the finding in itself, or the imposition of a sanction prima facie a breach of article 10; and
- (3) If so, was the restriction involved one which was justified by reason of the requirements of article 10(2)

Turning to the facts of this case, on question (1), it can clearly be said on the evidence that the Panel in this case is entitled, as a matter of fact, to conclude that Cllr Taylor was in breach of the code in the manner already set out.

As to question (2), that finding is, prima facie a breach of Cllr Taylor's Freedom of Expression. In essence, by saying he has breached the code by writing the emails and posting the website comments, the Council is interfering with Cllr Taylor's right to impart information and ideas.

The third question therefore falls to be considered: firstly, to the finding of a breach, and second to any sanction.

In my submission, whilst general criticism of the Council (and to a lesser degree officers of the Council) could be said to be the expression of a political view thus attracting a higher degree of protection from interference, the same cannot be said of personal comments, such as "little devious tricks"⁵, "you lot in the Developer's pocket"⁶ and referring to an email from Mr Stanfield, publicly, as "bollocks"⁷. In my view such comments do not attract that higher level of protection under Article 10.

Furthermore, the ECHR says that officials should be protected from such attacks, in other words that in order to allow an officer to do his job properly it may be more justifiable under Article 10(2) to restrict someone else's freedom to impart information and ideas, in this case, Cllr Taylor's.

In my submission therefore, the Panel is justified in interfering with Cllr Taylor's right to freedom of expression, by its finding of a breach, as that interference is necessary in a democratic society for the protection of the reputation or rights of others.

Kevin Toogood

12 October 2015

⁵ JTG12, Borough Green News 30/6/2014 at page 112 of the Schedule of Evidence

⁶ Interview, page 60 of the Schedule of Evidence

⁷ JTG10, email 13 June 2014 at page 91 of the Schedule of Evidence

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

1. Context

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

2. Interpretation

- 2.1 'Borough Council' means the Tonbridge and Malling Borough Council.
- 2.2 'Code of Conduct' means the Code of Conduct, which the Borough has adopted under section 27(2) of the Localism Act 2011 at Annex 1 to these Arrangements.
- 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 Borough Council to determine the outcome of any complaint alleging a breach of the Code of Conduct by a Subject Member in accordance with these Arrangements.
- 2.6 'Independent Person' means a person or persons appointed by the Borough Council under section 28(7) of the Localism Act 2011:
- (a) whose views must be sought and taken into account by the Borough Council before a decision is made on any complaint alleging a breach of the Code of Conduct by a Subject Member;
 - (b) who may be consulted by the Subject Member about the complaint.
- 2.7 'Investigating Officer' means the person appointed by the Monitoring Officer to undertake a formal investigation of a complaint alleging a breach of the Code of Conduct by a Subject Member. The Investigating Officer may be another senior officer of the Borough Council, an officer of another authority or an external investigator.
- 2.8 'Monitoring Officer' is a senior officer of the Borough Council who has statutory responsibility for maintaining the Register of Members' Interests and who is responsible for administering the arrangements for dealing with any complaint alleging a breach of the Code of Conduct by a Subject Member. It includes any other officer of the Borough Council nominated by the Monitoring Officer to act on their behalf.
- 2.9 'Parish Council' means the relevant parish/town council within the Borough of Tonbridge and Malling

- 2.10 'Parties' means the Complainant, Subject Member and the Investigating Officer, as appropriate.
- 2.11 'Subject Member' means an elected member or co-opted member of the Borough or Parish Council against whom a complaint has been made alleging a breach the Code of Conduct.

3. Appointment of Independent Person

- 3.1 The Council shall appoint the Independent Person (s) upon such terms as to remuneration and expenses as may be determined by the Borough Council from time to time.
- 3.2 The Independent Person (s) shall be treated as if they were a member of the Borough Council for the purposes of the Borough Council's arrangements for indemnifying and insuring its Members.

4. Making a complaint

- 4.1 A complaint alleging a breach of the Code of Conduct by a Subject Member must be made in writing and addressed to the Monitoring Officer using the Complaint Form at Annex 2 to these Arrangements. Complainants who find difficulty in making their complaint in writing (e.g. because of a disability), will be offered assistance.
- 4.2 The Subject Member will normally be informed of the identity of the Complainant and details of the complaint made against them, but the Complainant's identity and/or details of their complaint may be withheld at the Complainant's request if it appears to the Monitoring Officer that there are sound reasons for granting such a request (refer to paragraph 5 of Annex 2 to these Arrangements).
- 4.3 The Monitoring Officer will normally acknowledge receipt of a complaint within 5 working days of receiving it. At the same time (and subject to para. 4.2 above), the Monitoring Officer will send a copy of the complaint to the Subject Member in accordance with paragraph 2 of Annex 2 to these Arrangements.

5. Criminal conduct

- 5.1 In accordance with section 34 of the Localism Act 2011, it is a criminal offence if, without reasonable excuse, you:
- (a) fail to notify the Monitoring Officer of a Disclosable Pecuniary Interest within 28 days beginning with the day you become, or are re-elected or re-appointed, a Member or Co-opted Member of the Authority;
 - (b) fail to notify the Monitoring Officer of a Disclosable Pecuniary Interest within 28 days beginning with the day you become aware of it, where you are acting alone in the course of discharging a function of the Authority (including making a decision in relation to the matter) and the interest is not already registered or is not the subject of a pending notification to the Monitoring Officer;
 - (c) fail to disclose a Disclosable Pecuniary Interest at a meeting, where such interest has not already been registered or notified to the Monitoring Officer;
 - (d) fail to notify the Monitoring Officer of a Disclosable Pecuniary Interest within 28 days beginning with the day you disclose it at a meeting, where such interest has not already been registered or notified to the Monitoring Officer;

- (e) take part in discussions or votes at meetings that relate to the Disclosable Pecuniary Interest, unless a dispensation has been granted;
 - (f) knowingly or recklessly provide false or misleading information in any of the above disclosures or notifications.
- 5.2 Where a complaint against a Subject Member relates to conduct of a criminal nature referred to above, the Monitoring Officer will deal with the complaint in accordance with paragraph 4(4) of Annex 2 to these Arrangements.
- 6. Anonymous complaints**
- 6.1 Complainants must provide their full name and address. An anonymous complaint will only be accepted by the Monitoring Officer in consultation with the Independent Person, providing it is accompanied by corroborating evidence that indicates to the Monitoring Officer that it is in the public interest to accept the complaint.
- 7. Role of Independent Person**
- 7.1 The Independent Person(s) must be consulted and have their views taken into account before the Authority makes a finding as to whether a Member has failed to comply with the Code or decides on action to be taken in respect of that Member. At any other stage of the complaints process under these Arrangements, the Independent Person may be consulted by the Monitoring Officer and/or the Subject Member.
- 8. Preliminary tests**
- 8.1 The Monitoring Officer will, in consultation with the Independent Person(s), Chairman and Vice-Chairman of the Joint Standards Committee, put the complaint through a number of preliminary tests, in accordance with paragraph 1 of Annex 2 to these Arrangements.
- 8.2 In the event that the Independent Person is unavailable or unable to act, the time limits specified in paragraph 1 of Annex 2 to these Arrangements may either be extended by the Monitoring Officer or the Monitoring Officer may act by consulting only with Chairman and Vice-Chairman of the Joint Standards Committee in taking the decision or action.
- 9. Informal resolution**
- 9.1 The Monitoring Officer, in consultation with the Independent Person(s), Chairman and Vice-Chairman of the Joint Standards Committee, may consider that the complaint can be resolved informally at any stage in accordance with paragraph 6 of Annex 2 to these Arrangements.
- 10. Investigation**
- 10.1 If the Monitoring Officer, in consultation with the Independent Person, Chairman and Vice-Chairman of the Joint Standards Committee, decides that the complaint merits formal investigation, they will, within 10 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 3 to these Arrangements.

11. Hearing

- 11.1 If the Monitoring Officer, in consultation with the Independent Person, Chairman and Vice-Chairman of the Joint Standards Committee, 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 4 to these Arrangements.

12. Sanctions

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

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

Kent Code of Conduct for Members

Preamble

- (A) The Code of Conduct that follows is adopted under section 27(2) of the Localism Act 2011.
- (B) The Code is based on the Seven Principles of Public Life under section 28(1) of the Localism Act 2011, which are set out in Annex 1.
- (C) This Preamble and Annex 1 do not form part of the Code, but you should have regard to them as they will help you to comply with the Code.
- (D) If you need guidance on any matter under the Code, you should seek it from the Monitoring Officer or your own legal adviser – but it is entirely your responsibility to comply with the provisions of this Code.
- (E) In accordance with section 34 of the Localism Act 2011, it is a criminal offence if, without reasonable excuse, you:
 - (g) fail to notify the Monitoring Officer of a Disclosable Pecuniary Interest before the end of 28 days of becoming, or being re-elected or re-appointed, a Member or Co-opted Member of the Authority;
 - (h) fail to notify the Monitoring Officer of a Disclosable Pecuniary Interest before the end of 28 days of you becoming aware of it, where you are acting alone in the course of discharging a function of the Authority (including making a decision in relation to the matter) and the interest is not already registered or is not the subject of a pending notification to the Monitoring Officer;
 - (i) fail to disclose a Disclosable Pecuniary Interest at a meeting, where such interest has not already been registered or notified to the Monitoring Officer;
 - (j) fail to notify the Monitoring Officer of a Disclosable Pecuniary Interest before the end of 28 days of disclosing it at a meeting, where such interest has not already been registered or notified to the Monitoring Officer;
 - (k) take part in discussions or votes at meetings that relate to the Disclosable Pecuniary Interest, unless a dispensation has been granted
 - (l) knowingly or recklessly provide false or misleading information in any of the above disclosures or notifications.
- (F) Any written allegation received by the Authority that you have failed to comply with the Code will be dealt with under the arrangements adopted by the Authority for such purposes. If it is found that you have failed to comply with the Code, the Authority may have regard to this failure in deciding whether to take action and, if so, what action to take in relation to you.

THE CODE

1. Interpretation

In this Code:

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

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

“Authority” means Tonbridge and Malling Borough Council

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

- (a) housing - where you are a tenant of the Authority provided that those functions do not relate particularly to your tenancy or lease; or
- (b) school meals or school transport and travelling expenses - where you are a parent or guardian of a child in full time education, or are a parent governor of a school, unless it relates particularly to the school which your child attends;
- (c) statutory sick pay under Part XI of the Social Security Contributions and Benefits Act 1992 - where you are in receipt of, or are entitled to the receipt of, such pay;
- (d) an allowance, payment or indemnity given to members of the Authority;
- (e) any ceremonial honour given to members of the Authority;
- (f) setting council tax or a precept under the Local Government Finance Act 1992.

“Code” means this Code of Conduct.

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

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

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

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

“Interests” means Disclosable Pecuniary Interests and Other Significant Interests.

"Meeting" means any meeting of:

- (a) the Authority;
- (b) the executive of the Authority;
- (c) any of the Authority's or its executive's committees, sub-committees, joint committees and/or joint sub-committees.

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

“Other Significant Interest” means an interest (other than a Disclosable Pecuniary Interest or an interest in an Authority Function) which:

- (a) affects the financial position of yourself and/or an Associated Person; or
- (b) relates to the determination of your application for any approval, consent, licence, permission or registration made by, or on your behalf of, you and/or an Associated Person;

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

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

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

Scope

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

General obligations

3. (1) You must, when using or authorising the use by others of the resources of the Authority:

- (a) act in accordance with the Authority's reasonable requirements; and
- (b) ensure that such resources are not used improperly for political purposes (including party political purposes).

- (2) You must not:

- (a) bully any person;
- (b) intimidate or attempt to intimidate any person who is or is likely to be a complainant, a witness, or involved in the administration of any investigation

- or proceedings, in relation to an allegation that a Member (including yourself) has failed to comply with this Code;
- (c) do anything that compromises, or is likely to compromise, the impartiality or integrity of those who work for, or on behalf of, the Authority;
 - (d) disclose information given to you in confidence by anyone, or information acquired by you which you believe, or ought reasonably to be aware, is of a confidential nature, except where:
 - (i) you have the written consent of a person authorised to give it; or
 - (ii) you are required by law to do so; or
 - (iii) the disclosure is made to a third party for the purpose of obtaining professional advice provided that the third party agrees not to disclose the information to any other person; or
 - (iv) the disclosure is:
 - reasonable and in the public interest; and
 - made in good faith and in compliance with the reasonable requirements of the Authority;
 - (e) prevent another person from gaining access to information to which that person is entitled by law;
 - (f) conduct yourself in a manner which could reasonably be regarded as bringing your office or the Authority into disrepute;
 - (g) use or attempt to use your position as a Member improperly to confer on or secure for yourself or any other person, an advantage or disadvantage.

Registering Disclosable Pecuniary Interests

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

Declaring Interests

5. (1) Whether or not a Disclosable Pecuniary Interest has been entered onto the Register of Members' Interests or is the subject of a pending notification, you must comply with the disclosure procedures set out below.
- (2) Where you are present at a Meeting and have a Disclosable Pecuniary Interest or Other Significant Interest (and you are aware that you have such an interest) in any matter to be considered, or being considered, at the Meeting, you must:

- (a) disclose the Interest; and
 - (b) explain the nature of that Interest at the commencement of that consideration or when the Interest becomes apparent (subject to paragraph 6, below); and unless you have been granted a dispensation:
 - (c) not participate in any discussion of, or vote taken on, the matter at the Meeting; and
 - (d) withdraw from the Meeting room in accordance with the Authority's Procedure Rules whenever it becomes apparent that the business is being considered; and
 - (e) not seek improperly to influence a decision about that business.
- (3) Where you have a Disclosable Pecuniary Interest or Other Significant Interest in any business of the Authority where you are acting alone in the course of discharging a function of the Authority (including making an executive decision), you must:
- (a) notify the Monitoring Officer of the interest and its nature as soon as it becomes apparent; and
 - (b) not take any steps, or any further steps, in relation to the matter except for the purpose of enabling the matter to be dealt with otherwise than by you; and
 - (c) not seek improperly to influence a decision about the matter.
- (4) Where you have an Other Significant Interest in any business of the Authority, you may attend a Meeting but only for the purpose of making representations, answering questions or giving evidence relating to the business, provided that the public are also allowed to attend the Meeting for the same purpose. Having made your representations, given evidence or answered questions you must:
- (a) not participate in any discussion of, or vote taken on, the matter at the Meeting; and
 - (b) withdraw from the Meeting room in accordance with the Authority's Procedure Rules.

Sensitive Interests

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

Gifts and Hospitality

7. (1) You must, before the end of 28 days beginning with the day of receipt/acceptance, notify the Monitoring Officer of any gift, benefit or hospitality with an estimated value of £100 or more, or a series of gifts, benefits and

hospitality from the same or an associated source, with an estimated cumulative value of £100 or more, which are received and accepted by you (in any one calendar year) in the conduct of the business of the Authority, the business of the office to which you have been elected or appointed or when you are acting as representative of the Authority. You must also register the source of the gift, benefit or hospitality.

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

Dispensations

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

ANNEX 1

THE SEVEN PRINCIPLES OF PUBLIC LIFE

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

SELFLESSNESS: You should act solely in terms of the public interest and never improperly confer an advantage or disadvantage on any person or act to gain financial or other material benefits for yourself, your family, a friend or close associate.

INTEGRITY: You should exercise independent judgment and not compromise your position by placing yourself under obligations to outside individuals or organisations who might seek to influence you in the performance of your official duties. You should behave in accordance with all legal obligations, alongside any requirements contained within this Authority's policies, protocols and procedures, including on the use of the Authority's resources. You should value your colleagues and staff and engage with them in an appropriate manner and one that underpins the mutual respect that is essential to good local government. You should treat people with respect, including the organisations and public you engage with and those you work alongside.

OBJECTIVITY: In carrying out public business, including making public appointments, awarding contracts, or recommending individuals for rewards and benefits, you should make choices on merit. You should deal with representations or enquiries from residents, members of the communities and visitors fairly, appropriately and impartially. You should champion the needs of the whole community and especially your constituents, including those who did not vote for you.

ACCOUNTABILITY: You are accountable to the public for your decisions and actions and should fully co-operate with whatever scrutiny is appropriate to your office.

OPENNESS: You should be as open and as transparent as possible about all the decisions and actions that you take to enable residents to understand the reasoning behind those decisions and to be informed when holding you and other Members to account. You should give reasons for your decisions and restrict information only when the wider public interest or the law clearly demands it. You should listen to the interests of all parties, including relevant advice from statutory and other professional officers, taking all relevant information into consideration, remaining objective and making decisions on merit.

HONESTY: You have a duty to declare interests relating to your public duties and to take steps to resolve any conflicts arising in a way that protects the public interest. You should not allow other pressures, including the financial interests of yourself or others connected to you, to deter you from pursuing constituents' casework, the interests of the Authority's area or the good governance of the Authority in a proper manner.

LEADERSHIP: Through leadership and example you should promote and support high standards of conduct when serving in your public post. You should provide leadership through behaving in accordance with these principles when championing the interests of the community with other organisations as well as within this Authority.

ANNEX 2

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

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

“**the Act**” means the Localism Act 2011

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

“**director**” includes a member of the committee of management of an industrial and provident society

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

“**M**” means a member of the relevant authority

“**member**” includes a co-opted member

“**relevant authority**” means the authority of which M is a member

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

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

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

Interest	Description
Employment, office, trade, profession or vacation	Any employment, office, trade, profession or vocation carried on for profit or gain.
Sponsorship	Any payment or provision of any other financial benefit (other than from the relevant authority) made or provided within the relevant period in respect of any expenses incurred by M in carrying out duties as a member, or towards the election expenses of M. This includes any payment or financial benefit from a trade union within the meaning of the Trade Union and Labour

	Relations (Consolidation) Act 1992.
Contracts	Any contract which is made between the relevant person (or a body in which the relevant person has a beneficial interest) and the relevant authority: (a) under which goods or services are to be provided or works are to be executed; and (b) which has not been fully discharged.
Land	Any beneficial interest in land which is within the area of the relevant authority.
Licences	Any licence (alone or jointly with others) to occupy land in the area of the relevant authority for a month or longer.
Corporate tenancies	Any tenancy where (to M's knowledge): (a) the landlord is the relevant authority; and (b) the tenant is a body in which the relevant person has a beneficial interest.
Securities	Any beneficial interest in securities of a body where: (a) that body (to M's knowledge) has a place of business or land in the area of the relevant authority; and (b) either (i) the total nominal value of the securities exceeds £25,000 or one hundredth of the total issued share capital of that body; or (ii) if the share capital of that body is of more than one class, the total nominal value of the shares of any one class in which the relevant person has a beneficial interest exceeds one hundredth of the total issued share capital of that class.

PROCEDURE ON RECEIPT OF A COMPLAINT

1. Preliminary tests

1.1 The complaint will be assessed by the Monitoring Officer in consultation with the Independent Person(s) and Chairman and Vice-Chairman of the Joint Standards Committee against the legal jurisdiction test in paragraph 1.2 and, if applicable, the local assessment criteria test in paragraph 1.4 below.

1.2 Legal jurisdiction criteria test:

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

1.3 If the complaint fails one or more of the jurisdiction tests, no further action will be taken by the Monitoring Officer and the complaint will be rejected. The Complainant will be notified accordingly with reasons, within 10 working days of receipt of the complaint by the Monitoring Officer. There is no right of appeal against the Monitoring Officer's decision.

1.4 Local assessment criteria test:

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

- (a) The complaint is a 'repeat complaint', unless supported by new or further evidence substantiating or indicating that the complaint is exceptionally serious or significant;
- (b) The complaint is anonymous, unless supported by independent documentary evidence substantiating or indicating that the complaint is exceptionally serious or significant;
- (c) No or insufficient information/evidence to substantiate the complaint has been submitted by the Complainant;
- (d) The complaint is malicious, trivial, politically motivated or 'tit-for-tat';
- (e) The Complainant is unreasonably persistent, malicious and/or vexatious;
- (f) The alleged misconduct happened more than 3 months ago*;
- (g) The complaint is relatively minor and dealing with the complaint would have a disproportionate effect on both public money and officers' and Members' time;
- (h) The circumstances have changed so much that there would be little benefit arising from an investigation or other action;
- (i) The complaint has been the subject of an investigation or other action and there is nothing more to be gained by further action being taken;

- (j) The complaint is such that it is unlikely that an investigation will be able to come to a firm conclusion on the matter, e.g. where there is no firm evidence on the matter;
- (k) The complaint is about a deceased person;
- (l) The complaint is about a person who is no longer a Borough or Parish Councillor or Co-opted Member.

* The Monitoring Officer may depart from this test where he/ she is satisfied that exceptional circumstances exist. In determining whether such exceptional circumstances exist the Monitoring Officer will have regard to the seriousness of the alleged breach, the time when the alleged breach first came to the attention of the Complainant and the consequences of the delay for a fair disposal of the complaint.

- 1.5 If one or more of the local assessment criteria applies to the complaint, no further action will be taken by the Monitoring Officer and the complaint will be rejected. The Complainant will be notified accordingly with reasons within 10 working days of receipt of the complaint by the Monitoring Officer. There is no right of appeal against the Monitoring Officer's decision.

2. Notification of complaint to Subject Member

- 2.1 Subject to any representations from the Complainant on confidentiality (see paragraph 5 below), the Monitoring Officer will notify the Subject Member [and, if applicable, the Parish Clerk].
- 2.2 The Monitoring Officer may invite the Subject Member [and, if applicable, the Parish Clerk] to submit initial views on the complaint within 10 working days, which will be taken into account by the Monitoring Officer when they decide how to deal with the complaint (see paragraph 4 below). Views received from the Subject Member [and/or Parish Clerk] after the 10 working day time limit may be taken into account at the discretion of the Monitoring Officer, providing the views are received before the Monitoring Officer issues their written decision on how the complaint will be dealt with.

3. Asking for additional information

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

4. What process to apply - informal resolution or investigation and/or no action?

- 4.1 The Monitoring Officer may at any stage (whether without the need for an investigation or before or after the commencement or conclusion of an investigation) seek to resolve the complaint informally in accordance with paragraph 6 below. Where the Subject Member or the Monitoring Officer or the Borough/ Parish Council make a reasonable offer of informal resolution, but the Complainant is not willing to accept this offer, the Monitoring Officer will take account of this in deciding whether the complaint merits formal investigation.
- 4.2 The Monitoring Officer in consultation with the Independent Person(s) and Chairman and Vice-Chairman of the Joint Standards Committee may refer the complaint for investigation when:

- (a) it is serious enough, if proven, to justify the range of sanctions available to the Joint Standards Committee (see paragraph 4 of Annex 4 to these Arrangements);
 - (b) the Subject Member's behaviour is part of a continuing pattern of less serious misconduct that is unreasonably disrupting the business of the Borough or Parish Council and there is no other avenue left to deal with it short of investigation and, 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 3 to these Arrangements.
- 4.4 If the complaint identifies criminal conduct or breach of other regulations by the Subject Member or any other person, the Complainant will be advised by the Monitoring Officer to report the complaint to the police or other prosecuting or regulatory authority. In such cases, the complaints process under these Arrangements will be suspended, pending a decision/action by the police or other prosecuting or regulatory authority. Where the police or other prosecuting or regulatory authority decide to take no action on the complaint, the Monitoring Officer will lift the suspension and in consultation with the Independent Person will apply the local assessment criteria test in paragraph 1.4 above.
- 4.5 The Monitoring Officer in consultation with the Independent Person(s) and Chairman and Vice-Chairman of the Joint Standards Committee, will take no action on the complaint when one or more of the following apply:
- (a) on-going criminal proceedings or a police investigation into the Subject Member's conduct or where the complaint is suspended in accordance with paragraph 4.4 above;
 - (b) investigation cannot be proceeded with, without investigating similar alleged conduct or needing to come to conclusions of fact about events which are also the subject of some other investigation or court proceedings;
 - (c) the investigation might prejudice another investigation or court proceedings;
 - (d) on-going investigation by another prosecuting or regulatory authority;
 - (e) genuine long term (3 months or more) unavailability of a key party;
 - (f) serious illness of a key party.
- 4.6 Within 20 working days of receipt of the complaint, the Monitoring Officer will notify the Complainant, Subject Member [and, if applicable, the Parish Clerk] of their decision and reasons for applying one of the following processes in the format of the Decision Notice template (appended to this Annex 2):
- (a) not to refer the complaint for investigation; or
 - (b) to refer the complaint for investigation; or
 - (c) to apply the informal resolution process either before or after an investigation;
or

- (d) following investigation, to refer the complaint to the [Hearing Panel]; or
- (e) to take no action and close the matter; or
- (f) to 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. However, in the event that the Complainant submits additional relevant information, the Monitoring Officer will consider and decide if the matter warrants further consideration under these Arrangements, in which case it shall be treated as a fresh complaint.

5. Confidentiality

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

5.2 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 if they are satisfied that the Complainant has reasonable grounds for believing that they 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 Borough or Parish Council service provision or any tender/contract they may have with or are about to submit to the Borough or Parish Council.

OR where early disclosure of the complaint:

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

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

- (a) to facilitate transparency and ethical governance accountability: recognising that decision-making may be improved by constructive contributions from others;

- (b) to raise public awareness: disclosing the complaint or part of it may inform the community about matters of general concern;
- (c) justice to an individual: the balance of the public interest may favour disclosure of the complaint to the Subject Member when it may not be in the public interest to disclose it to the world at large;
- (d) bringing out in the open serious concerns about the behaviour/conduct of an individual.

5.4 The Monitoring Officer, in consultation with the Independent Person(s) and Chairman and Vice-Chairman of the Joint Standards Committee, will balance whether the public interest in accepting the complaint outweighs the Complainant's wish to have their identity (or that of another person) withheld from the Subject Member. If the Monitoring Officer decides to refuse the Complainant's request for confidentiality, they will offer the Complainant the option to withdraw their complaint. The Complainant will be notified of the Monitoring Officer's decision, with reasons, within 15 working days of receipt of the complaint by the Monitoring Officer. There is no right of appeal against the Monitoring Officer's decision to refuse the Complainant's request for confidentiality.

6. Informal resolution

6.1 The Monitoring Officer may after consultation with the Independent Person(s) and Chairman and Vice-Chairman of the Joint Standards Committee 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. The Monitoring Officer will consult with the Complainant and the Subject Member to agree what they consider to be a fair resolution which will help to ensure higher standards of conduct for the future.

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

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

- (j) The conduct complained of may be due to misleading, unclear or misunderstood advice from officers.

6.3 Informal resolution may consist of one or more of the following actions, which do not have to be limited to the Subject Member, but may extend to other councillors including the whole Borough/ Parish Council where it may be useful to address systemic behaviour:

- (a) training;
- (b) conciliation/mediation;
- (c) mentoring;
- (d) apology;
- (e) instituting changes to the Borough or Parish Council's procedures;
- (f) conflict management;
- (g) development of the Borough or Parish Council's protocols;
- (h) other remedial action by the Borough or Parish Council;
- (i) other steps (other than investigation) if it appears appropriate to the Monitoring Officer in consultation with the Independent Person.

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

6.5 Where the Subject Member will not participate in the informal resolution process or if, having agreed to one or more actions under the informal resolution process, the Subject Member refuses or fails to carry out any agreed action, the Monitoring Officer may after consultation with the Independent Person(s) and the Chairman and Vice-Chairman of the Joint Standards Committee reconsider whether the complaint should be investigated, or an investigation concluded.

EXAMPLE TEMPLATE – COMPLAINT FORM

The complaint form may be viewed on the Council's website via the following link -

<http://www.tmbc.gov.uk/services/council-and-democracy/councillors,-democracy-and-elections/council-constitution/articles/standards-committee>

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

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

Complaint No:

Complaint

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

Complaint summary

[Summarise complaint in numbered paragraphs]

Consultation with Independent Person(s)

[Summarise the Independent Person(s) views in numbered paragraphs]

Consultation with the Chairman & Vice-Chairman of the Joint Standards Committee

[Summarise their views in numbered paragraphs]

Decision

Having consulted and taken into account the views of the Independent Person(s) and Chairman and Vice-Chairman of the Joint Standards Committee, 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 to decide if the Code of Conduct has been breached. They are only considering if there is enough information which shows a potential breach of the Code of Conduct that warrants referral for investigation.

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

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

[detail relevant Code of Conduct paragraphs]

Notification of decision

This decision notice is sent to the:

- Complainant

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

What happens now

The complaint will now be investigated under the Borough 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 Borough 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]. We welcome calls via [Typetalk](#).

Signed:

Date

Print name:

Monitoring Officer of the Tonbridge and Malling Borough Council

Gibson Building

Gibson Drive

Kings Hill

West Malling

Kent ME19 4LZ

2. PROCEDURE FOR INVESTIGATING THE COMPLAINT

1. Preliminaries

- 1.1 The Investigating Officer will be appointed by the Monitoring Officer and will be aware of their obligations under the Data Protection Act 1998, Equalities Act 2010, the Human Rights Act 1998 and other relevant legislation.
- 1.2 The Investigating Officer is responsible for gathering all the facts, documents and, where applicable, for interviewing witnesses with knowledge of the facts, and they should remain objective, impartial and unbiased at all times.
- 1.3 The Subject Member and the Complainant will be advised that the investigation is for fact finding purposes only.
- 1.4 Witnesses will be identified at the investigation stage and their evidence supported by signed and dated witness statements and/or notes of interview with the Investigating Officer. The Investigating Officer cannot compel the attendance of witnesses or their co-operation.
- 1.5 The Investigating Officer will not make recommendations on sanctions.
- 1.6 Within 10 working days of being appointed, the Investigating Officer will notify the Subject Member and the Complainant of their appointment and:
 - (a) provide details of the complaint to the Subject Member;
 - (b) detail the procedure to be followed in respect of the investigation and the relevant timescales for responses and concluding the investigation;
 - (c) detail the sections of the Code of Conduct that appear to be relevant to the complaint;
 - (d) request contact details of any potential witnesses;
 - (e) require that confidentiality is maintained and that details of the complaint not be disclosed to any third party, unless disclosure is to a representative, witness, immediate family members or otherwise as may be required by law or regulation. However, the fact that an investigation is being conducted does not need to remain confidential.
- 1.7 It may be necessary for the Investigating Officer to agree with the Subject Member which documents will be submitted in evidence. This will generally include documents that will be relied on, or in support of, the Subject Member's case and which are relevant to the complaint.
- 1.8 The Investigating Officer may terminate their investigation at any point, where they are satisfied that they have sufficient information to enable them to report to the [Monitoring Officer] [Hearing Panel].

2. The draft report

- 2.1 On the conclusion of their investigation the Investigating Officer will issue a draft report (clearly labelled 'DRAFT') to the Monitoring Officer for review.
- 2.2 Following review by the Monitoring Officer, the draft report will be sent in confidence to the Subject Member and the Complainant (not witnesses) for comment. The draft report will be clearly labelled 'CONFIDENTIAL' and will detail:

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

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

3. Consideration of Investigating Officer's final report

3.1 The Monitoring Officer will review the Investigating Officer's final report and any comments submitted by the Parties, in consultation with the Independent Person(s) and Chairman and Vice-Chairman of the Joint Standards Committee.

3.2 Where, on the basis of the Investigating Officer's report, the Monitoring Officer, having consulted with the Independent Person(s), Chairman and Vice-Chairman of the Joint Standards Committee, concludes that there is no evidence of a failure to comply with the Code of Conduct; they will inform the Parties in writing that no further action is considered necessary. There is no right of appeal against the Monitoring Officer's decision.

3.3 Where, on the basis of the Investigating Officer's report, the Monitoring Officer, having consulted with the Independent Person(s), Chairman and Vice-Chairman of the Joint Standards Committee 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 2 to these Arrangements.

HEARING PANEL PROCEDURE

1. Rules of procedure

1.1 The Hearing Panel shall be comprised as follows –

(a) Where the Subject Member is a Borough Councillor, the Panel shall be comprised of five Borough Members and one Parish/ Town Member drawn from the Joint Standards Committee, one of whom shall be elected as Chairman.

(b) Where the Subject Member is a Town or Parish Councillor, the Panel shall be comprised of three Borough Members and three Parish/ Town Members drawn from the Joint Standards Committee, one of whom shall be elected as Chairman.

Where practicable, members of the Hearing Panel shall be drawn from a different planning area of the Borough than the member against whom the complaint has been made.

1.2 The quorum for a meeting of the Hearing Panel is three.

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

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

1.5 All matters/issues before the Hearing Panel will be decided by a simple majority of votes cast, with the Chairman having a second or casting vote.

1.6 Where the Subject Member fails to attend the Hearing Panel and where the Hearing Panel is not satisfied with their explanation for their absence from the hearing, the Hearing Panel may in the first instance, have regard to any written representations submitted by the Subject Member and may resolve to proceed with the hearing in the Subject Member's absence and make a determination or, if satisfied with the Subject Member's reasons for not attending the hearing, adjourn the hearing to another date. The Hearing Panel may resolve in exceptional circumstances, that it will proceed with the hearing on the basis that it is in the public interest to hear the allegations expeditiously.¹

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

2. Right to be accompanied by a representative

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

3. The conduct of the hearing

3.1 Subject to paragraph 3.2 below, the order of business will be as follows:

- (a) elect a Chairman;
- (b) apologies for absence;
- (c) declarations of interests;
- (d) in the absence of the Subject Member, consideration as to whether to adjourn or to proceed with the hearing (refer to paragraph 1.11 above);
- (e) introduction by the Chairman, of members of the Hearing Panel, the Independent Person, Monitoring Officer, Investigating Officer, legal advisor, complainant and the Subject Member and their representative;
- (f) to receive representations from the Monitoring Officer and/or Subject Member as to whether any part of the hearing should be held in private and/or whether any documents (or parts thereof) should be withheld from the public/press;
- (g) to determine whether the public/press are to be excluded from any part of the meeting and/or whether any documents (or parts thereof) should be withheld from the public/press.

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

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

3.4 Presentation of the complaint

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

3.5 Presentation of the Subject Member's case

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

3.6 Summing up

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

3.7 Views/Submissions of the Independent Person

The Chairman will invite the Independent Person to express their view on whether they consider that on the facts presented to the Hearing Panel, there has been a breach of the Code of Conduct or no breach as the case may be.

3.8 Deliberations of the Hearing Panel

Deliberation in private

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

Announcing decision on facts found

- 3.9 (a) The Hearing Panel will reconvene the hearing in public and the Chairman will announce that on the facts found, the Panel considers that there has been a breach of the Code of Conduct, or no breach, as the case may be.
- (b) Where the Hearing Panel finds that there has been a breach of the Code of Conduct, the Chairman will invite the Independent Person, the Subject Member* and the Monitoring Officer to make their representations as to whether any sanctions (in accordance with paragraph 4 of this Annex 4) should be applied and what form they should take.

*The Subject Member will be invited to make representations on the form of any sanctions, but not as to whether any sanctions should be applied.

- (c) 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.
- (d) If evidence presented to the Hearing Panel highlights other potential breaches of the Borough or Parish Council's Code of Conduct, then the Chairman will outline the Hearing Panel's concerns and recommend that the matter be referred to the Monitoring Officer as a new complaint.

Formal Announcement of Decision

- 3.10 (a) Where the complaint has a number of aspects, the Hearing Panel may reach a finding, apply a sanction and/or make a recommendation on each aspect separately.
- (b) The Hearing Panel will make its decision on the balance of probability, based on the evidence before it during the hearing.

- (c) Having taken into account the representations of the Independent Person, the Subject Member and the Monitoring Officer on the application of sanctions, the Hearing Panel will reconvene the hearing in public and the Chairman will announce:
 - (i) the Panel's decision as to whether or not the Subject Member has failed to comply with the Code of Conduct, and the principal reasons for the decision;
 - (ii) the sanctions (if any) to be applied;
 - (iii) the recommendations (if any) to be made to the Borough or Parish Council or Monitoring Officer;
 - (iv) that there is no right of appeal against the Panel's decision and/or recommendations.

4. Range of possible sanctions

4.1 Subject to paragraph 4.4 below, where the Hearing Panel determines that the Subject Member has failed to comply with the Code of Conduct, any one or more of the following sanctions may be applied/ recommended:

- (a) Recommending to the Borough/ Parish Council that the Subject Member be issued with a formal censure (i.e. the issue of an unfavourable opinion or judgement or reprimand) by motion;
- (b) Recommending to the Subject Member's Group Leader or Parish Council, or in the case of a ungrouped Subject Member, to the Borough/ Parish Council that they be removed from committees or sub-committees of the Council;
- (c) Recommending to the Leader of the Borough Council that the Subject Member be removed from the Cabinet or removed from particular Portfolio responsibilities;
- (d) Instructing the Monitoring Officer [or recommendation to the Parish Council] to arrange training for the Subject Member;
- (e) Recommending to the Borough/ Parish Council that the Subject Member be removed from all outside appointments to which they have been appointed or nominated by the Borough/ Parish Council;
- (f) Recommending to the Borough/ Parish Council that it withdraws facilities provided to the Subject Member by the Council, such as a computer, website and/or email and internet access;
- (g) Recommending to the Borough/ Parish Council the exclusion of the Subject Member from the Borough/ Parish Council's offices or other premises, with the exception of meeting rooms as necessary for attending Borough/ Parish Council committee and sub- committee meetings;
- (h) Reporting the Panel's findings to the Borough/ Parish Council for information;
- (i) Instructing the Monitoring Officer to apply the informal resolution process;
- (j) Sending a formal letter to the Subject Member;
- (k) Recommending to the Borough/ Parish Council to issue a press release or other form of publicity;
- (l) Publishing its findings in respect of the Subject Member's conduct in such manner as the Panel considers appropriate.

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

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

4.4 When deciding whether to apply one or more sanctions referred to in paragraph 4.1 above, 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 Borough/ Parish Council's Code of Conduct?
- (b) Did the Subject Member receive advice from officers before the incident and was that advice acted on in good faith?
- (c) Has there been a breach of trust?
- (d) Has there been financial impropriety, e.g. improper expense claims or procedural irregularities?
- (e) What was the result/impact of failing to follow the Borough/ Parish Council's Code of Conduct?
- (f) How serious was the incident?
- (g) Does the Subject Member accept that they were at fault?
- (h) Did the Subject Member apologise to the relevant persons?
- (i) Has the Subject Member previously been reprimanded or warned for similar misconduct?
- (j) Has the Subject Member previously breached of the Borough or Parish Council's Code of Conduct?
- (k) Is there likely to be a repetition of the incident?

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

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

5.2 Within 10 working days of the announcement of the Hearing Panel's decision, the Monitoring Officer will provide a full written decision and the reasons for the decision, including any recommendations, in the format of the Decision Notice template below to:

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

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

TEMPLATE - DECISION NOTICE (of Hearing Panel)

Complaint No: xxxx

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

Complaint summary

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

Consultation with Independent Person

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

Findings

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

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

The Hearing Panel also made the following recommendation(s)

[Detail recommendations]

Sanctions applied

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

Appeal

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

Notification of decision

This decision notice is sent to the:

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

Additional help

If you need additional support in relation to this decision notice or future contact with the Borough 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]. We welcome calls via [Typetalk](#)

Signed:

Date

Print name:

Chairman of the Hearing Panel

Tonbridge and Malling Borough Council

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TONBRIDGE & MALLING BOROUGH COUNCIL

COUNCIL

03 November 2015

Report of the Monitoring Officer

Part 1- Public

For decision

1 CODE OF CONDUCT COMPLAINTS – COMPOSITION OF HEARING PANEL

1.1 In accordance with the requirements of Section 28 of the Localism Act 2011, the Borough Council has adopted arrangements under which allegations can be investigated and decisions on allegations can be made. The existing arrangements were adopted by the Borough Council on 10 July 2012, and apply to all Code of Conduct complaints made against Borough or Parish Councillors.

1.1.1 The current arrangements are attached as **Annex 1**. At Annex 4 to the Arrangements are details of the procedure to be followed by the Hearing Panel when considering complaints against Borough and Parish Councillors.

1.1.2 This report seeks to make a small addition to the arrangements to address the practical operation of the hearing panel when considering a complaint against a person acting in a capacity both as a member of the Borough Council and as a Parish Councillor.

1.2 Composition of Hearing Panel

1.2.1 Under the current arrangements (paragraph 1.1 of the Hearing Panel Procedure), the Hearing Panel shall be comprised as follows

(a) Where the Subject Member is a Borough Councillor, the Panel shall be comprised of five Borough Members and one Parish/ Town Member drawn from the Joint Standards Committee, one of whom shall be elected as Chairman.

(b) Where the Subject Member is a Town or Parish Councillor, the Panel shall be comprised of three Borough Members and three Parish/ Town Members drawn from the Joint Standards Committee, one of whom shall be elected as Chairman.

Where practicable, members of the Hearing Panel shall be drawn from a different planning area of the Borough than the member against whom the complaint has been made

1.2.2 Paragraph 1.1 is silent as the composition of the Panel in circumstances where the Subject Member is acting in a capacity both as a Borough and as a Town/ Parish Councillor. On a practical level, this has not caused a problem thus far, but

it is considered prudent to make express provision in the arrangements in order to avoid any potential for uncertainty.

1.2.3 It is therefore proposed that the arrangements be amended so as to provide that, where the Subject Member is acting in a capacity both as a Borough Councillor and as a Town/ Parish Councillor, the Panel shall be comprised of five Borough Members and one Parish/ Town Member drawn from the Joint Standards Committee, one of whom shall be elected as Chairman. In that way the Panel shall be comprised in the same way as it would be if the Subject Member were solely acting in the capacity of a Borough Councillor.

1.3 **Legal Implications**

1.3.1 The Borough Council is required to have in place arrangements under which allegations can be investigated, and decisions on allegations can be made.

1.4 **Financial and Value for Money Considerations**

1.4.1 None arising from this report.

1.5 **Recommendation**

1.5.1 Members are asked to **APPROVE** the amendment to the arrangements as set out in this report.

Background papers:

contact: Adrian Stanfield

Nil

Adrian Stanfield
Director of Central Services and Monitoring Officer

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

1. Context

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

2. Interpretation

- 2.1 'Borough Council' means the Tonbridge and Malling Borough Council.
- 2.2 'Code of Conduct' means the Code of Conduct, which the Borough has adopted under section 27(2) of the Localism Act 2011 at Annex 1 to these Arrangements.
- 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 Borough Council to determine the outcome of any complaint alleging a breach of the Code of Conduct by a Subject Member in accordance with these Arrangements.
- 2.6 'Independent Person' means a person or persons appointed by the Borough Council under section 28(7) of the Localism Act 2011:
- (a) whose views must be sought and taken into account by the Borough Council before a decision is made on any complaint alleging a breach of the Code of Conduct by a Subject Member;
 - (b) who may be consulted by the Subject Member about the complaint.
- 2.7 'Investigating Officer' means the person appointed by the Monitoring Officer to undertake a formal investigation of a complaint alleging a breach of the Code of Conduct by a Subject Member. The Investigating Officer may be another senior officer of the Borough Council, an officer of another authority or an external investigator.
- 2.8 'Monitoring Officer' is a senior officer of the Borough Council who has statutory responsibility for maintaining the Register of Members' Interests and who is responsible for administering the arrangements for dealing with any complaint alleging a breach of the Code of Conduct by a Subject Member. It includes any other officer of the Borough Council nominated by the Monitoring Officer to act on their behalf.
- 2.9 'Parish Council' means the relevant parish/town council within the Borough of Tonbridge and Malling

- 2.10 'Parties' means the Complainant, Subject Member and the Investigating Officer, as appropriate.
- 2.11 'Subject Member' means an elected member or co-opted member of the Borough or Parish Council against whom a complaint has been made alleging a breach the Code of Conduct.

3. Appointment of Independent Person

- 3.1 The Council shall appoint the Independent Person (s) upon such terms as to remuneration and expenses as may be determined by the Borough Council from time to time.
- 3.2 The Independent Person (s) shall be treated as if they were a member of the Borough Council for the purposes of the Borough Council's arrangements for indemnifying and insuring its Members.

4. Making a complaint

- 4.1 A complaint alleging a breach of the Code of Conduct by a Subject Member must be made in writing and addressed to the Monitoring Officer using the Complaint Form at Annex 2 to these Arrangements. Complainants who find difficulty in making their complaint in writing (e.g. because of a disability), will be offered assistance.
- 4.2 The Subject Member will normally be informed of the identity of the Complainant and details of the complaint made against them, but the Complainant's identity and/or details of their complaint may be withheld at the Complainant's request if it appears to the Monitoring Officer that there are sound reasons for granting such a request (refer to paragraph 5 of Annex 2 to these Arrangements).
- 4.3 The Monitoring Officer will normally acknowledge receipt of a complaint within 5 working days of receiving it. At the same time (and subject to para. 4.2 above), the Monitoring Officer will send a copy of the complaint to the Subject Member in accordance with paragraph 2 of Annex 2 to these Arrangements.

5. Criminal conduct

- 5.1 In accordance with section 34 of the Localism Act 2011, it is a criminal offence if, without reasonable excuse, you:
- (a) fail to notify the Monitoring Officer of a Disclosable Pecuniary Interest within 28 days beginning with the day you become, or are re-elected or re-appointed, a Member or Co-opted Member of the Authority;
 - (b) fail to notify the Monitoring Officer of a Disclosable Pecuniary Interest within 28 days beginning with the day you become aware of it, where you are acting alone in the course of discharging a function of the Authority (including making a decision in relation to the matter) and the interest is not already registered or is not the subject of a pending notification to the Monitoring Officer;
 - (c) fail to disclose a Disclosable Pecuniary Interest at a meeting, where such interest has not already been registered or notified to the Monitoring Officer;
 - (d) fail to notify the Monitoring Officer of a Disclosable Pecuniary Interest within 28 days beginning with the day you disclose it at a meeting, where such interest has not already been registered or notified to the Monitoring Officer;

- (e) take part in discussions or votes at meetings that relate to the Disclosable Pecuniary Interest, unless a dispensation has been granted;
- (f) knowingly or recklessly provide false or misleading information in any of the above disclosures or notifications.

5.2 Where a complaint against a Subject Member relates to conduct of a criminal nature referred to above, the Monitoring Officer will deal with the complaint in accordance with paragraph 4(4) of Annex 2 to these Arrangements.

6. Anonymous complaints

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

7. Role of Independent Person

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

8. Preliminary tests

8.1 The Monitoring Officer will, in consultation with the Independent Person(s), Chairman and Vice-Chairman of the Joint Standards Committee, put the complaint through a number of preliminary tests, in accordance with paragraph 1 of Annex 2 to these Arrangements.

8.2 In the event that the Independent Person is unavailable or unable to act, the time limits specified in paragraph 1 of Annex 2 to these Arrangements may either be extended by the Monitoring Officer or the Monitoring Officer may act by consulting only with Chairman and Vice-Chairman of the Joint Standards Committee in taking the decision or action.

9. Informal resolution

9.1 The Monitoring Officer, in consultation with the Independent Person(s), Chairman and Vice-Chairman of the Joint Standards Committee, may consider that the complaint can be resolved informally at any stage in accordance with paragraph 6 of Annex 2 to these Arrangements.

10. Investigation

10.1 If the Monitoring Officer, in consultation with the Independent Person, Chairman and Vice-Chairman of the Joint Standards Committee, decides that the complaint merits formal investigation, they will, within 10 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 3 to these Arrangements.

11. Hearing

- 11.1 If the Monitoring Officer, in consultation with the Independent Person, Chairman and Vice-Chairman of the Joint Standards Committee, 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 4 to these Arrangements.

12. Sanctions

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

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

Kent Code of Conduct for Members

Preamble

- (A) The Code of Conduct that follows is adopted under section 27(2) of the Localism Act 2011.
- (B) The Code is based on the Seven Principles of Public Life under section 28(1) of the Localism Act 2011, which are set out in Annex 1.
- (C) This Preamble and Annex 1 do not form part of the Code, but you should have regard to them as they will help you to comply with the Code.
- (D) If you need guidance on any matter under the Code, you should seek it from the Monitoring Officer or your own legal adviser – but it is entirely your responsibility to comply with the provisions of this Code.
- (E) In accordance with section 34 of the Localism Act 2011, it is a criminal offence if, without reasonable excuse, you:
 - (g) fail to notify the Monitoring Officer of a Disclosable Pecuniary Interest before the end of 28 days of becoming, or being re-elected or re-appointed, a Member or Co-opted Member of the Authority;
 - (h) fail to notify the Monitoring Officer of a Disclosable Pecuniary Interest before the end of 28 days of you becoming aware of it, where you are acting alone in the course of discharging a function of the Authority (including making a decision in relation to the matter) and the interest is not already registered or is not the subject of a pending notification to the Monitoring Officer;
 - (i) fail to disclose a Disclosable Pecuniary Interest at a meeting, where such interest has not already been registered or notified to the Monitoring Officer;
 - (j) fail to notify the Monitoring Officer of a Disclosable Pecuniary Interest before the end of 28 days of disclosing it at a meeting, where such interest has not already been registered or notified to the Monitoring Officer;
 - (k) take part in discussions or votes at meetings that relate to the Disclosable Pecuniary Interest, unless a dispensation has been granted
 - (l) knowingly or recklessly provide false or misleading information in any of the above disclosures or notifications.
- (F) Any written allegation received by the Authority that you have failed to comply with the Code will be dealt with under the arrangements adopted by the Authority for such purposes. If it is found that you have failed to comply with the Code, the Authority may have regard to this failure in deciding whether to take action and, if so, what action to take in relation to you.

THE CODE

1. Interpretation

In this Code:

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

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

“Authority” means Tonbridge and Malling Borough Council

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

- (a) housing - where you are a tenant of the Authority provided that those functions do not relate particularly to your tenancy or lease; or
- (b) school meals or school transport and travelling expenses - where you are a parent or guardian of a child in full time education, or are a parent governor of a school, unless it relates particularly to the school which your child attends;
- (c) statutory sick pay under Part XI of the Social Security Contributions and Benefits Act 1992 - where you are in receipt of, or are entitled to the receipt of, such pay;
- (d) an allowance, payment or indemnity given to members of the Authority;
- (e) any ceremonial honour given to members of the Authority;
- (f) setting council tax or a precept under the Local Government Finance Act 1992.

“Code” means this Code of Conduct.

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

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

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

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

“Interests” means Disclosable Pecuniary Interests and Other Significant Interests.

"Meeting" means any meeting of:

- (a) the Authority;
- (b) the executive of the Authority;
- (c) any of the Authority's or its executive's committees, sub-committees, joint committees and/or joint sub-committees.

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

“Other Significant Interest” means an interest (other than a Disclosable Pecuniary Interest or an interest in an Authority Function) which:

- (a) affects the financial position of yourself and/or an Associated Person; or
- (b) relates to the determination of your application for any approval, consent, licence, permission or registration made by, or on your behalf of, you and/or an Associated Person;

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

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

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

Scope

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

General obligations

3. (1) You must, when using or authorising the use by others of the resources of the Authority:

- (a) act in accordance with the Authority's reasonable requirements; and
- (b) ensure that such resources are not used improperly for political purposes (including party political purposes).

- (2) You must not:

- (a) bully any person;
- (b) intimidate or attempt to intimidate any person who is or is likely to be a complainant, a witness, or involved in the administration of any investigation

- or proceedings, in relation to an allegation that a Member (including yourself) has failed to comply with this Code;
- (c) do anything that compromises, or is likely to compromise, the impartiality or integrity of those who work for, or on behalf of, the Authority;
 - (d) disclose information given to you in confidence by anyone, or information acquired by you which you believe, or ought reasonably to be aware, is of a confidential nature, except where:
 - (i) you have the written consent of a person authorised to give it; or
 - (ii) you are required by law to do so; or
 - (iii) the disclosure is made to a third party for the purpose of obtaining professional advice provided that the third party agrees not to disclose the information to any other person; or
 - (iv) the disclosure is:
 - reasonable and in the public interest; and
 - made in good faith and in compliance with the reasonable requirements of the Authority;
 - (e) prevent another person from gaining access to information to which that person is entitled by law;
 - (f) conduct yourself in a manner which could reasonably be regarded as bringing your office or the Authority into disrepute;
 - (g) use or attempt to use your position as a Member improperly to confer on or secure for yourself or any other person, an advantage or disadvantage.

Registering Disclosable Pecuniary Interests

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

Declaring Interests

5. (1) Whether or not a Disclosable Pecuniary Interest has been entered onto the Register of Members' Interests or is the subject of a pending notification, you must comply with the disclosure procedures set out below.
- (2) Where you are present at a Meeting and have a Disclosable Pecuniary Interest or Other Significant Interest (and you are aware that you have such an interest) in any matter to be considered, or being considered, at the Meeting, you must:

- (a) disclose the Interest; and
 - (b) explain the nature of that Interest at the commencement of that consideration or when the Interest becomes apparent (subject to paragraph 6, below); and unless you have been granted a dispensation:
 - (c) not participate in any discussion of, or vote taken on, the matter at the Meeting; and
 - (d) withdraw from the Meeting room in accordance with the Authority's Procedure Rules whenever it becomes apparent that the business is being considered; and
 - (e) not seek improperly to influence a decision about that business.
- (3) Where you have a Disclosable Pecuniary Interest or Other Significant Interest in any business of the Authority where you are acting alone in the course of discharging a function of the Authority (including making an executive decision), you must:
- (a) notify the Monitoring Officer of the interest and its nature as soon as it becomes apparent; and
 - (b) not take any steps, or any further steps, in relation to the matter except for the purpose of enabling the matter to be dealt with otherwise than by you; and
 - (c) not seek improperly to influence a decision about the matter.
- (4) Where you have an Other Significant Interest in any business of the Authority, you may attend a Meeting but only for the purpose of making representations, answering questions or giving evidence relating to the business, provided that the public are also allowed to attend the Meeting for the same purpose. Having made your representations, given evidence or answered questions you must:
- (a) not participate in any discussion of, or vote taken on, the matter at the Meeting; and
 - (b) withdraw from the Meeting room in accordance with the Authority's Procedure Rules.

Sensitive Interests

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

Gifts and Hospitality

7. (1) You must, before the end of 28 days beginning with the day of receipt/acceptance, notify the Monitoring Officer of any gift, benefit or hospitality with an estimated value of £100 or more, or a series of gifts, benefits and

hospitality from the same or an associated source, with an estimated cumulative value of £100 or more, which are received and accepted by you (in any one calendar year) in the conduct of the business of the Authority, the business of the office to which you have been elected or appointed or when you are acting as representative of the Authority. You must also register the source of the gift, benefit or hospitality.

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

Dispensations

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

ANNEX 1

THE SEVEN PRINCIPLES OF PUBLIC LIFE

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

SELFLESSNESS: You should act solely in terms of the public interest and never improperly confer an advantage or disadvantage on any person or act to gain financial or other material benefits for yourself, your family, a friend or close associate.

INTEGRITY: You should exercise independent judgment and not compromise your position by placing yourself under obligations to outside individuals or organisations who might seek to influence you in the performance of your official duties. You should behave in accordance with all legal obligations, alongside any requirements contained within this Authority's policies, protocols and procedures, including on the use of the Authority's resources. You should value your colleagues and staff and engage with them in an appropriate manner and one that underpins the mutual respect that is essential to good local government. You should treat people with respect, including the organisations and public you engage with and those you work alongside.

OBJECTIVITY: In carrying out public business, including making public appointments, awarding contracts, or recommending individuals for rewards and benefits, you should make choices on merit. You should deal with representations or enquiries from residents, members of the communities and visitors fairly, appropriately and impartially. You should champion the needs of the whole community and especially your constituents, including those who did not vote for you.

ACCOUNTABILITY: You are accountable to the public for your decisions and actions and should fully co-operate with whatever scrutiny is appropriate to your office.

OPENNESS: You should be as open and as transparent as possible about all the decisions and actions that you take to enable residents to understand the reasoning behind those decisions and to be informed when holding you and other Members to account. You should give reasons for your decisions and restrict information only when the wider public interest or the law clearly demands it. You should listen to the interests of all parties, including relevant advice from statutory and other professional officers, taking all relevant information into consideration, remaining objective and making decisions on merit.

HONESTY: You have a duty to declare interests relating to your public duties and to take steps to resolve any conflicts arising in a way that protects the public interest. You should not allow other pressures, including the financial interests of yourself or others connected to you, to deter you from pursuing constituents' casework, the interests of the Authority's area or the good governance of the Authority in a proper manner.

LEADERSHIP: Through leadership and example you should promote and support high standards of conduct when serving in your public post. You should provide leadership through behaving in accordance with these principles when championing the interests of the community with other organisations as well as within this Authority.

ANNEX 2

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

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

“**the Act**” means the Localism Act 2011

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

“**director**” includes a member of the committee of management of an industrial and provident society

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

“**M**” means a member of the relevant authority

“**member**” includes a co-opted member

“**relevant authority**” means the authority of which M is a member

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

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

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

Interest	Description
Employment, office, trade, profession or vacation	Any employment, office, trade, profession or vocation carried on for profit or gain.
Sponsorship	Any payment or provision of any other financial benefit (other than from the relevant authority) made or provided within the relevant period in respect of any expenses incurred by M in carrying out duties as a member, or towards the election expenses of M. This includes any payment or financial benefit from a trade union within the meaning of the Trade Union and Labour

	Relations (Consolidation) Act 1992.
Contracts	Any contract which is made between the relevant person (or a body in which the relevant person has a beneficial interest) and the relevant authority: (a) under which goods or services are to be provided or works are to be executed; and (b) which has not been fully discharged.
Land	Any beneficial interest in land which is within the area of the relevant authority.
Licences	Any licence (alone or jointly with others) to occupy land in the area of the relevant authority for a month or longer.
Corporate tenancies	Any tenancy where (to M's knowledge): (a) the landlord is the relevant authority; and (b) the tenant is a body in which the relevant person has a beneficial interest.
Securities	Any beneficial interest in securities of a body where: (a) that body (to M's knowledge) has a place of business or land in the area of the relevant authority; and (b) either (i) the total nominal value of the securities exceeds £25,000 or one hundredth of the total issued share capital of that body; or (ii) if the share capital of that body is of more than one class, the total nominal value of the shares of any one class in which the relevant person has a beneficial interest exceeds one hundredth of the total issued share capital of that class.

PROCEDURE ON RECEIPT OF A COMPLAINT

1. Preliminary tests

1.1 The complaint will be assessed by the Monitoring Officer in consultation with the Independent Person(s) and Chairman and Vice-Chairman of the Joint Standards Committee against the legal jurisdiction test in paragraph 1.2 and, if applicable, the local assessment criteria test in paragraph 1.4 below.

1.2 Legal jurisdiction criteria test:

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

1.3 If the complaint fails one or more of the jurisdiction tests, no further action will be taken by the Monitoring Officer and the complaint will be rejected. The Complainant will be notified accordingly with reasons, within 10 working days of receipt of the complaint by the Monitoring Officer. There is no right of appeal against the Monitoring Officer's decision.

1.4 Local assessment criteria test:

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

- (a) The complaint is a 'repeat complaint', unless supported by new or further evidence substantiating or indicating that the complaint is exceptionally serious or significant;
- (b) The complaint is anonymous, unless supported by independent documentary evidence substantiating or indicating that the complaint is exceptionally serious or significant;
- (c) No or insufficient information/evidence to substantiate the complaint has been submitted by the Complainant;
- (d) The complaint is malicious, trivial, politically motivated or 'tit-for-tat';
- (e) The Complainant is unreasonably persistent, malicious and/or vexatious;
- (f) The alleged misconduct happened more than 3 months ago*;
- (g) The complaint is relatively minor and dealing with the complaint would have a disproportionate effect on both public money and officers' and Members' time;
- (h) The circumstances have changed so much that there would be little benefit arising from an investigation or other action;
- (i) The complaint has been the subject of an investigation or other action and there is nothing more to be gained by further action being taken;

- (j) The complaint is such that it is unlikely that an investigation will be able to come to a firm conclusion on the matter, e.g. where there is no firm evidence on the matter;
- (k) The complaint is about a deceased person;
- (l) The complaint is about a person who is no longer a Borough or Parish Councillor or Co-opted Member.

* The Monitoring Officer may depart from this test where he/ she is satisfied that exceptional circumstances exist. In determining whether such exceptional circumstances exist the Monitoring Officer will have regard to the seriousness of the alleged breach, the time when the alleged breach first came to the attention of the Complainant and the consequences of the delay for a fair disposal of the complaint.

- 1.5 If one or more of the local assessment criteria applies to the complaint, no further action will be taken by the Monitoring Officer and the complaint will be rejected. The Complainant will be notified accordingly with reasons within 10 working days of receipt of the complaint by the Monitoring Officer. There is no right of appeal against the Monitoring Officer's decision.

2. Notification of complaint to Subject Member

- 2.1 Subject to any representations from the Complainant on confidentiality (see paragraph 5 below), the Monitoring Officer will notify the Subject Member [and, if applicable, the Parish Clerk].
- 2.2 The Monitoring Officer may invite the Subject Member [and, if applicable, the Parish Clerk] to submit initial views on the complaint within 10 working days, which will be taken into account by the Monitoring Officer when they decide how to deal with the complaint (see paragraph 4 below). Views received from the Subject Member [and/or Parish Clerk] after the 10 working day time limit may be taken into account at the discretion of the Monitoring Officer, providing the views are received before the Monitoring Officer issues their written decision on how the complaint will be dealt with.

3. Asking for additional information

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

4. What process to apply - informal resolution or investigation and/or no action?

- 4.1 The Monitoring Officer may at any stage (whether without the need for an investigation or before or after the commencement or conclusion of an investigation) seek to resolve the complaint informally in accordance with paragraph 6 below. Where the Subject Member or the Monitoring Officer or the Borough/ Parish Council make a reasonable offer of informal resolution, but the Complainant is not willing to accept this offer, the Monitoring Officer will take account of this in deciding whether the complaint merits formal investigation.
- 4.2 The Monitoring Officer in consultation with the Independent Person(s) and Chairman and Vice-Chairman of the Joint Standards Committee may refer the complaint for investigation when:

- (a) it is serious enough, if proven, to justify the range of sanctions available to the Joint Standards Committee (see paragraph 4 of Annex 4 to these Arrangements);
 - (b) the Subject Member's behaviour is part of a continuing pattern of less serious misconduct that is unreasonably disrupting the business of the Borough or Parish Council and there is no other avenue left to deal with it short of investigation and, 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 3 to these Arrangements.
- 4.4 If the complaint identifies criminal conduct or breach of other regulations by the Subject Member or any other person, the Complainant will be advised by the Monitoring Officer to report the complaint to the police or other prosecuting or regulatory authority. In such cases, the complaints process under these Arrangements will be suspended, pending a decision/action by the police or other prosecuting or regulatory authority. Where the police or other prosecuting or regulatory authority decide to take no action on the complaint, the Monitoring Officer will lift the suspension and in consultation with the Independent Person will apply the local assessment criteria test in paragraph 1.4 above.
- 4.5 The Monitoring Officer in consultation with the Independent Person(s) and Chairman and Vice-Chairman of the Joint Standards Committee, will take no action on the complaint when one or more of the following apply:
- (a) on-going criminal proceedings or a police investigation into the Subject Member's conduct or where the complaint is suspended in accordance with paragraph 4.4 above;
 - (b) investigation cannot be proceeded with, without investigating similar alleged conduct or needing to come to conclusions of fact about events which are also the subject of some other investigation or court proceedings;
 - (c) the investigation might prejudice another investigation or court proceedings;
 - (d) on-going investigation by another prosecuting or regulatory authority;
 - (e) genuine long term (3 months or more) unavailability of a key party;
 - (f) serious illness of a key party.
- 4.6 Within 20 working days of receipt of the complaint, the Monitoring Officer will notify the Complainant, Subject Member [and, if applicable, the Parish Clerk] of their decision and reasons for applying one of the following processes in the format of the Decision Notice template (appended to this Annex 2):
- (a) not to refer the complaint for investigation; or
 - (b) to refer the complaint for investigation; or
 - (c) to apply the informal resolution process either before or after an investigation;
or

- (d) following investigation, to refer the complaint to the [Hearing Panel]; or
- (e) to take no action and close the matter; or
- (f) to 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. However, in the event that the Complainant submits additional relevant information, the Monitoring Officer will consider and decide if the matter warrants further consideration under these Arrangements, in which case it shall be treated as a fresh complaint.

5. Confidentiality

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

5.2 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 if they are satisfied that the Complainant has reasonable grounds for believing that they 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 Borough or Parish Council service provision or any tender/contract they may have with or are about to submit to the Borough or Parish Council.

OR where early disclosure of the complaint:

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

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

- (a) to facilitate transparency and ethical governance accountability: recognising that decision-making may be improved by constructive contributions from others;

- (b) to raise public awareness: disclosing the complaint or part of it may inform the community about matters of general concern;
- (c) justice to an individual: the balance of the public interest may favour disclosure of the complaint to the Subject Member when it may not be in the public interest to disclose it to the world at large;
- (d) bringing out in the open serious concerns about the behaviour/conduct of an individual.

5.4 The Monitoring Officer, in consultation with the Independent Person(s) and Chairman and Vice-Chairman of the Joint Standards Committee, will balance whether the public interest in accepting the complaint outweighs the Complainant's wish to have their identity (or that of another person) withheld from the Subject Member. If the Monitoring Officer decides to refuse the Complainant's request for confidentiality, they will offer the Complainant the option to withdraw their complaint. The Complainant will be notified of the Monitoring Officer's decision, with reasons, within 15 working days of receipt of the complaint by the Monitoring Officer. There is no right of appeal against the Monitoring Officer's decision to refuse the Complainant's request for confidentiality.

6. Informal resolution

6.1 The Monitoring Officer may after consultation with the Independent Person(s) and Chairman and Vice-Chairman of the Joint Standards Committee 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. The Monitoring Officer will consult with the Complainant and the Subject Member to agree what they consider to be a fair resolution which will help to ensure higher standards of conduct for the future.

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

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

- (j) The conduct complained of may be due to misleading, unclear or misunderstood advice from officers.

6.3 Informal resolution may consist of one or more of the following actions, which do not have to be limited to the Subject Member, but may extend to other councillors including the whole Borough/ Parish Council where it may be useful to address systemic behaviour:

- (a) training;
- (b) conciliation/mediation;
- (c) mentoring;
- (d) apology;
- (e) instituting changes to the Borough or Parish Council's procedures;
- (f) conflict management;
- (g) development of the Borough or Parish Council's protocols;
- (h) other remedial action by the Borough or Parish Council;
- (i) other steps (other than investigation) if it appears appropriate to the Monitoring Officer in consultation with the Independent Person.

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

6.5 Where the Subject Member will not participate in the informal resolution process or if, having agreed to one or more actions under the informal resolution process, the Subject Member refuses or fails to carry out any agreed action, the Monitoring Officer may after consultation with the Independent Person(s) and the Chairman and Vice-Chairman of the Joint Standards Committee reconsider whether the complaint should be investigated, or an investigation concluded.

EXAMPLE TEMPLATE – COMPLAINT FORM

The complaint form may be viewed on the Council's website via the following link -

<http://www.tmbc.gov.uk/services/council-and-democracy/councillors,-democracy-and-elections/council-constitution/articles/standards-committee>

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

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

Complaint No:

Complaint

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

Complaint summary

[Summarise complaint in numbered paragraphs]

Consultation with Independent Person(s)

[Summarise the Independent Person(s) views in numbered paragraphs]

Consultation with the Chairman & Vice-Chairman of the Joint Standards Committee

[Summarise their views in numbered paragraphs]

Decision

Having consulted and taken into account the views of the Independent Person(s) and Chairman and Vice-Chairman of the Joint Standards Committee, 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 to decide if the Code of Conduct has been breached. They are only considering if there is enough information which shows a potential breach of the Code of Conduct that warrants referral for investigation.

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

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

[detail relevant Code of Conduct paragraphs]

Notification of decision

This decision notice is sent to the:

- Complainant

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

What happens now

The complaint will now be investigated under the Borough 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 Borough 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]. We welcome calls via [Typetalk](#).

Signed:

Date

Print name:

Monitoring Officer of the Tonbridge and Malling Borough Council

Gibson Building

Gibson Drive

Kings Hill

West Malling

Kent ME19 4LZ

2. PROCEDURE FOR INVESTIGATING THE COMPLAINT

1. Preliminaries

- 1.1 The Investigating Officer will be appointed by the Monitoring Officer and will be aware of their obligations under the Data Protection Act 1998, Equalities Act 2010, the Human Rights Act 1998 and other relevant legislation.
- 1.2 The Investigating Officer is responsible for gathering all the facts, documents and, where applicable, for interviewing witnesses with knowledge of the facts, and they should remain objective, impartial and unbiased at all times.
- 1.3 The Subject Member and the Complainant will be advised that the investigation is for fact finding purposes only.
- 1.4 Witnesses will be identified at the investigation stage and their evidence supported by signed and dated witness statements and/or notes of interview with the Investigating Officer. The Investigating Officer cannot compel the attendance of witnesses or their co-operation.
- 1.5 The Investigating Officer will not make recommendations on sanctions.
- 1.6 Within 10 working days of being appointed, the Investigating Officer will notify the Subject Member and the Complainant of their appointment and:
 - (a) provide details of the complaint to the Subject Member;
 - (b) detail the procedure to be followed in respect of the investigation and the relevant timescales for responses and concluding the investigation;
 - (c) detail the sections of the Code of Conduct that appear to be relevant to the complaint;
 - (d) request contact details of any potential witnesses;
 - (e) require that confidentiality is maintained and that details of the complaint not be disclosed to any third party, unless disclosure is to a representative, witness, immediate family members or otherwise as may be required by law or regulation. However, the fact that an investigation is being conducted does not need to remain confidential.
- 1.7 It may be necessary for the Investigating Officer to agree with the Subject Member which documents will be submitted in evidence. This will generally include documents that will be relied on, or in support of, the Subject Member's case and which are relevant to the complaint.
- 1.8 The Investigating Officer may terminate their investigation at any point, where they are satisfied that they have sufficient information to enable them to report to the [Monitoring Officer] [Hearing Panel].

2. The draft report

- 2.1 On the conclusion of their investigation the Investigating Officer will issue a draft report (clearly labelled 'DRAFT') to the Monitoring Officer for review.
- 2.2 Following review by the Monitoring Officer, the draft report will be sent in confidence to the Subject Member and the Complainant (not witnesses) for comment. The draft report will be clearly labelled 'CONFIDENTIAL' and will detail:

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

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

3. Consideration of Investigating Officer's final report

3.1 The Monitoring Officer will review the Investigating Officer's final report and any comments submitted by the Parties, in consultation with the Independent Person(s) and Chairman and Vice-Chairman of the Joint Standards Committee.

3.2 Where, on the basis of the Investigating Officer's report, the Monitoring Officer, having consulted with the Independent Person(s), Chairman and Vice-Chairman of the Joint Standards Committee, concludes that there is no evidence of a failure to comply with the Code of Conduct; they will inform the Parties in writing that no further action is considered necessary. There is no right of appeal against the Monitoring Officer's decision.

3.3 Where, on the basis of the Investigating Officer's report, the Monitoring Officer, having consulted with the Independent Person(s), Chairman and Vice-Chairman of the Joint Standards Committee 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 2 to these Arrangements.

HEARING PANEL PROCEDURE

1. Rules of procedure

1.1 The Hearing Panel shall be comprised as follows –

(a) Where the Subject Member is a Borough Councillor, the Panel shall be comprised of five Borough Members and one Parish/ Town Member drawn from the Joint Standards Committee, one of whom shall be elected as Chairman.

(b) Where the Subject Member is a Town or Parish Councillor, the Panel shall be comprised of three Borough Members and three Parish/ Town Members drawn from the Joint Standards Committee, one of whom shall be elected as Chairman.

Where practicable, members of the Hearing Panel shall be drawn from a different planning area of the Borough than the member against whom the complaint has been made.

1.2 The quorum for a meeting of the Hearing Panel is three.

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

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

1.5 All matters/issues before the Hearing Panel will be decided by a simple majority of votes cast, with the Chairman having a second or casting vote.

1.6 Where the Subject Member fails to attend the Hearing Panel and where the Hearing Panel is not satisfied with their explanation for their absence from the hearing, the Hearing Panel may in the first instance, have regard to any written representations submitted by the Subject Member and may resolve to proceed with the hearing in the Subject Member's absence and make a determination or, if satisfied with the Subject Member's reasons for not attending the hearing, adjourn the hearing to another date. The Hearing Panel may resolve in exceptional circumstances, that it will proceed with the hearing on the basis that it is in the public interest to hear the allegations expeditiously.¹

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

2. Right to be accompanied by a representative

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

3. The conduct of the hearing

3.1 Subject to paragraph 3.2 below, the order of business will be as follows:

- (a) elect a Chairman;
- (b) apologies for absence;
- (c) declarations of interests;
- (d) in the absence of the Subject Member, consideration as to whether to adjourn or to proceed with the hearing (refer to paragraph 1.11 above);
- (e) introduction by the Chairman, of members of the Hearing Panel, the Independent Person, Monitoring Officer, Investigating Officer, legal advisor, complainant and the Subject Member and their representative;
- (f) to receive representations from the Monitoring Officer and/or Subject Member as to whether any part of the hearing should be held in private and/or whether any documents (or parts thereof) should be withheld from the public/press;
- (g) to determine whether the public/press are to be excluded from any part of the meeting and/or whether any documents (or parts thereof) should be withheld from the public/press.

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

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

3.4 Presentation of the complaint

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

3.5 Presentation of the Subject Member's case

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

3.6 Summing up

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

3.7 Views/Submissions of the Independent Person

The Chairman will invite the Independent Person to express their view on whether they consider that on the facts presented to the Hearing Panel, there has been a breach of the Code of Conduct or no breach as the case may be.

3.8 Deliberations of the Hearing Panel

Deliberation in private

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

Announcing decision on facts found

- 3.9 (a) The Hearing Panel will reconvene the hearing in public and the Chairman will announce that on the facts found, the Panel considers that there has been a breach of the Code of Conduct, or no breach, as the case may be.
- (b) Where the Hearing Panel finds that there has been a breach of the Code of Conduct, the Chairman will invite the Independent Person, the Subject Member* and the Monitoring Officer to make their representations as to whether any sanctions (in accordance with paragraph 4 of this Annex 4) should be applied and what form they should take.

*The Subject Member will be invited to make representations on the form of any sanctions, but not as to whether any sanctions should be applied.

- (c) 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.
- (d) If evidence presented to the Hearing Panel highlights other potential breaches of the Borough or Parish Council's Code of Conduct, then the Chairman will outline the Hearing Panel's concerns and recommend that the matter be referred to the Monitoring Officer as a new complaint.

Formal Announcement of Decision

- 3.10 (a) Where the complaint has a number of aspects, the Hearing Panel may reach a finding, apply a sanction and/or make a recommendation on each aspect separately.
- (b) The Hearing Panel will make its decision on the balance of probability, based on the evidence before it during the hearing.

- (c) Having taken into account the representations of the Independent Person, the Subject Member and the Monitoring Officer on the application of sanctions, the Hearing Panel will reconvene the hearing in public and the Chairman will announce:
 - (i) the Panel's decision as to whether or not the Subject Member has failed to comply with the Code of Conduct, and the principal reasons for the decision;
 - (ii) the sanctions (if any) to be applied;
 - (iii) the recommendations (if any) to be made to the Borough or Parish Council or Monitoring Officer;
 - (iv) that there is no right of appeal against the Panel's decision and/or recommendations.

4. Range of possible sanctions

4.1 Subject to paragraph 4.4 below, where the Hearing Panel determines that the Subject Member has failed to comply with the Code of Conduct, any one or more of the following sanctions may be applied/ recommended:

- (a) Recommending to the Borough/ Parish Council that the Subject Member be issued with a formal censure (i.e. the issue of an unfavourable opinion or judgement or reprimand) by motion;
- (b) Recommending to the Subject Member's Group Leader or Parish Council, or in the case of a ungrouped Subject Member, to the Borough/ Parish Council that they be removed from committees or sub-committees of the Council;
- (c) Recommending to the Leader of the Borough Council that the Subject Member be removed from the Cabinet or removed from particular Portfolio responsibilities;
- (d) Instructing the Monitoring Officer [or recommendation to the Parish Council] to arrange training for the Subject Member;
- (e) Recommending to the Borough/ Parish Council that the Subject Member be removed from all outside appointments to which they have been appointed or nominated by the Borough/ Parish Council;
- (f) Recommending to the Borough/ Parish Council that it withdraws facilities provided to the Subject Member by the Council, such as a computer, website and/or email and internet access;
- (g) Recommending to the Borough/ Parish Council the exclusion of the Subject Member from the Borough/ Parish Council's offices or other premises, with the exception of meeting rooms as necessary for attending Borough/ Parish Council committee and sub- committee meetings;
- (h) Reporting the Panel's findings to the Borough/ Parish Council for information;
- (i) Instructing the Monitoring Officer to apply the informal resolution process;
- (j) Sending a formal letter to the Subject Member;
- (k) Recommending to the Borough/ Parish Council to issue a press release or other form of publicity;
- (l) Publishing its findings in respect of the Subject Member's conduct in such manner as the Panel considers appropriate.

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

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

4.4 When deciding whether to apply one or more sanctions referred to in paragraph 4.1 above, 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 Borough/ Parish Council's Code of Conduct?
- (b) Did the Subject Member receive advice from officers before the incident and was that advice acted on in good faith?
- (c) Has there been a breach of trust?
- (d) Has there been financial impropriety, e.g. improper expense claims or procedural irregularities?
- (e) What was the result/impact of failing to follow the Borough/ Parish Council's Code of Conduct?
- (f) How serious was the incident?
- (g) Does the Subject Member accept that they were at fault?
- (h) Did the Subject Member apologise to the relevant persons?
- (i) Has the Subject Member previously been reprimanded or warned for similar misconduct?
- (j) Has the Subject Member previously breached of the Borough or Parish Council's Code of Conduct?
- (k) Is there likely to be a repetition of the incident?

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

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

5.2 Within 10 working days of the announcement of the Hearing Panel's decision, the Monitoring Officer will provide a full written decision and the reasons for the decision, including any recommendations, in the format of the Decision Notice template below to:

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

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

TEMPLATE - DECISION NOTICE (of Hearing Panel)

Complaint No: xxxx

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

Complaint summary

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

Consultation with Independent Person

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

Findings

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

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

The Hearing Panel also made the following recommendation(s)

[Detail recommendations]

Sanctions applied

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

Appeal

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

Notification of decision

This decision notice is sent to the:

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

Additional help

If you need additional support in relation to this decision notice or future contact with the Borough 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]. We welcome calls via [Typetalk](#)

Signed:

Date

Print name:

Chairman of the Hearing Panel

Tonbridge and Malling Borough Council

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TONBRIDGE & MALLING BOROUGH COUNCIL

COUNCIL

03 November 2015

Report of the Director of Central Services & Monitoring Officer

Part 1- Public

Matters For Decision

1 CHANGES TO CONSTITUTION

The report recommends that changes are made to the Constitution to ensure that officers are able to effectively discharge the duties and powers of the Council

1.1 Introduction

1.1.1 Part 2 of the Constitution provides that the Monitoring Officer will monitor and review the operation of the Constitution to ensure that the aims and principles of the Constitution are given full effect.

1.1.2 As part of this ongoing review, I have noted that there are a small number of areas where changes need to be made to ensure the Constitution remains up to date. This report sets out the areas in question, and recommends appropriate amendments to the constitution.

1.1.3 The report also requests that an amendment is made to the constitution in respect of one specific authorised officer appointment, namely that of the Proper Officer for the purposes of various public health functions.

1.2 Proposed amendments

1.2.1 It is proposed that the following specific amendments are made to the Constitution

(a) Amendment of Part 4, Rule 15.21 (Council and Committee Procedure Rules) to replace references to the Town and Parish Councils Standards Sub-Committee with 'Standards Hearing Panel' (Proposed new wording at **Annex 1**);

(b) Removal of Part 5, Protocol A (Further provisions relating to the making of declarations under paragraph 13 of the Code). These are now obsolete;

(c) Amendment of Part 5, Protocol C to ensure consistency with the Members' Code of Conduct (Proposed new wording at **Annex 2**).

(d) Removal of Part 5, Protocol H (Political restrictions applying to Independent Members of the Council's Standards Committee). These are now obsolete as the Council does not have Independent Members on the Joint Standards Committee;

(e) Re-ordering of remaining Protocols in Part 5 to take account of the removal of Protocols A & H.

1.3 Authorised Officer for public health functions

1.3.1 Part 3 of the Constitution currently designates Dr James Sedgwick (Interim Director for the Kent Health Protection Unit as the appropriate 'Authorised Officer' for the purposes of exercising various public health functions under the Health Protection (Notification) Regulations 2010 and the Public Health (Control of Disease) Act 1984.

1.3.2 In light of recent organisational changes, Public Health England has suggested that we no longer have a specific individual named as Proper Officer. Instead, they suggest that we designate any person for the time being employed as a Consultant in Communicable Disease Control/ Consultant in Health Protection at Public Health England, as the Proper Officer for the following purposes

Legislation	Section or Regulations	Effect
The Health Protection (Notification) Regulations 2010	Regulations 2, 3, 6	Receipt and disclosure of notification of suspected notifiable disease, infection or contamination in patients and dead persons.
Public Health (Control of Disease) Act 1984	Section 48 as amended by Health and Social Care Act 2008	Preparation of certificate to Justice of Peace for removal of body to mortuary and for burial within a prescribed time or immediately.

1.4 Legal Implications

1.4.1 Article 15 in part 2 of the Constitution sets out the procedure for review and revision of the Constitution. Changes to the Constitution may only be approved by full Council after consideration of a report on the proposal from the Council's Monitoring Officer.

1.5 Financial and Value for Money Considerations

1.5.1 None.

1.6 Risk Assessment

- 1.6.1 If the changes are not made to the Constitution to deal with new legislation then officers will not be able to enforce our statutory duties and powers effectively and efficiently.

1.7 Equality Impact Assessment

- 1.7.1 The decisions recommended through this paper have a remote or low relevance to the substance of the Equality Act. There is no perceived impact on end users.

1.8 Recommendations

- 1.8.1 It is **RECOMMENDED** that the Monitoring Officer be authorised to amend the Constitution to give effect to the changes outlined in this report.

Background papers:

contact: Adrian Stanfield

Adrian Stanfield
Director of Central Services &
Monitoring Officer

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Proposed new wording for Rule 15.21

15.21 Any member of the Council may attend meetings of any committee or sub-committee (and, exceptionally, of Working Parties by prior invitation of the chairman) of which he is not a member and may, with the permission of the chairman speak but not vote.

Provided that this rule does not apply to meetings of the Licensing and Appeals Panel or the Standards Hearings Panel

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Protocol C: Gifts, Benefits and Hospitality

C1. Meaning of "gifts" and "hospitality"

C1.1 The words "gifts", "benefits" and "hospitality" have wide meanings and no conclusive definition is possible. Gifts, benefits and hospitality include:

- (a) the gift of any goods or services;
- (b) the opportunity to acquire any goods or services free of charge or at a discount or at terms not available to the general public;
- (c) the offer of food, drink, accommodation or entertainment or the opportunity to attend any cultural or sporting event on terms not available to the general public.

C1.2 Common gifts include pens, diaries, calendars and other business stationery, key rings, articles of clothing, books, flowers, bouquets and promotional items.

C1.3 Common hospitality includes lunches, dinners or refreshments.

C2. General caution

C2.1 The fundamental principle must always be that any offer of a gift, benefit or hospitality should be treated with great care. Your prime duty as a member is to ensure that there is no conflict of interest in the performance of your duties. You should treat with caution any gift, benefit or hospitality that is made to you personally. Your personal reputation and that of the council can be seriously jeopardised by the inappropriate acceptance by you of a gift, benefit or hospitality.

C2.2 You should consider carefully all the circumstances surrounding the offer of a gift, benefit or hospitality. The scale, amount of the offer and the potential frequency and source are relevant factors. Also, you should be sensitive to the timing of the offer in relation to any business of the council which may affect those making the offer.

C2.3 You should avoid hospitality in situations where you, or you accompanied by members of your family, would be the only guests.

C2.4 You may have to estimate the value of the gift, benefit or hospitality. Where possible, you should use as a guide the charge which other members of the public would pay to purchase the gift or receive the hospitality.

C2.5 The decision for you in every case is whether or not it is appropriate to accept any gift, benefit or hospitality that might be offered to you, having regard to how it might be perceived by an ordinary member of the public. No hard and fast rules can be laid down to cover every circumstance as to what is appropriate or inappropriate. To refuse may cause misunderstanding or offence; however, to accept may give rise to impropriety or conflict of interest. In any case of doubt, you should discuss the circumstances with the monitoring officer.

- C2.6 Where the decision whether to accept hospitality is left to your judgement, you need to ask yourself some commonsense questions: for example:
- is there a benefit to the council in your accepting the invitation;
 - is the entertainment lavish, on a scale which you could not personally afford;
 - whether you are accepting too much hospitality from the same source;
 - if your position is prominent, whether just your attendance at an event might be open to interpretation as a signal of support.

C3. Code of Conduct requirements

- C3.1 The members' code of conduct requires you to register in the Register of Interests maintained by the monitoring officer, any gift, benefit or hospitality with an estimated value of £100 or more, or a series of gifts, benefits or 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 Council, the business of the office to which you have been elected or appointed (for example as mayor or deputy mayor) or when you are acting as representative of the Council. You must also register the source of the gift, benefit or hospitality.
- C3.2 You must register the gift, benefit or hospitality within 28 days of its receipt/acceptance, using the form provided by the monitoring officer for the purpose.
- C3.3 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 set out in paragraph 5 of the Code of Conduct will apply.
- C3.4 You must continue to disclose the existence and nature of the gift, benefit or hospitality etc at relevant Council meetings, for three years from the date you first registered the gift, benefit or hospitality.
- C3.5 Where any gift, benefit or hospitality (no matter the value) is accepted, the donor should always be advised that acceptance will not confer any advantage for that donor in his/her dealings with the Council.

C4. Gifts and hospitality below the £100 threshold

- C4.1 You are encouraged to register with the monitoring officer, any gift, benefit or hospitality you receive which you estimate to be below the £100 threshold, but there is no obligation to make a disclosure at a Council meeting of the source of the gift, benefit or hospitality. Remember – it is in your interests always to register a gift, benefit or hospitality if it could be perceived as something given to you because of your position.

C5. What to avoid

C5.1 In deciding whether it is appropriate to accept any gift, benefit or hospitality, you must apply the following principles:

- do not accept a gift, benefit or hospitality as an inducement or reward for anything you do as a member: if you have any suspicion that the motive behind the gift, benefit or hospitality is an inducement or reward, you must decline it. 'Reward' includes remuneration, reimbursement and fee.
- do not accept a gift, benefit or hospitality of significant value or whose value is disproportionate in the circumstances.
- do not accept a gift, benefit or hospitality if you believe it will put you under any future obligation to the provider as a consequence.
- do not solicit any gift, benefit or hospitality and avoid giving any perception of doing so.
- do not accept a gift, benefit or hospitality, if acceptance might be open to misinterpretation. Such circumstances will include gifts and hospitality:
 - (i) from parties involved with the Council in a competitive tendering or other procurement process.
 - (ii) from applicants for planning permission and other applications for licences, consents and approvals.
 - (iii) from applicants for grants, including voluntary bodies and other organisations applying for public funding.
 - (iv) from applicants for benefits, claims and dispensations.
 - (v) from parties in legal proceedings with the Council.

C5.2 It is a criminal offence corruptly to solicit or receive any gift, reward or advantage as an inducement to doing or forbearing to do anything in respect of any transaction involving the Council. The onus would be on you to disprove corruption in relation to the receipt of a gift, benefit or hospitality from a person holding or seeking to obtain a contract from the Council.

C5.3 Cash or monetary gifts should always be refused without exception and the refusal notified to the monitoring officer

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Sealing of Documents

To authorise the Common Seal of the Council to be affixed to any Contract, Minute, Notice or other document requiring the same.

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