

## 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-Chairmen 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-Chairmen 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-Chairmen 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-Chairmen 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-Chairmen 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.

## ANNEX 1

## 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-Chairmen 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-Chairmen 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-Chairmen 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-Chairmen 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-Chairmen 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-Chairmen 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-Chairmen 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-Chairmen 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-Chairmen 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-Chairmen 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-Chairmen 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.

(c) 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

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.<sup>1</sup>

## **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.

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

### 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