

## **D2. CODE COMPLAINTS**

### **1. Context**

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

### **2. Interpretation**

- 2.1.** '**Borough Council**' means Maidstone Borough Council.
- 2.2.** '**Code of Conduct**' means the Code of Conduct, which the Borough and Parish/Town Council have adopted under section 27(2) of the Localism Act 2011.
- 2.3.** '**Complainant**' means a person who has submitted a complaint in accordance with these Arrangements alleging that a Subject Member has breached the Code of Conduct.
- 2.4.** '**Disclosable Pecuniary Interest**' means those disclosable pecuniary interests that meet the definition prescribed by regulations (as amended from time to time) as set out in Annex 2 to the Members' 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:
- 2.6.1. whose views are to be sought and taken into account by the Borough Council before it makes its decision on an allegation that it has decided to investigate and whose views may be sought by the Borough Council at any other stage, or

2.6.2. 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.** The **'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/Town Council'** means the relevant Parish/Town Council within the Borough of Maidstone.
- 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/Town Council against whom a complaint has been made alleging a breach of the Members' Code of Conduct.

### **3. Appointment of Independent Person**

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

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

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

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

**4.3.** The Monitoring Officer will normally acknowledge receipt of a complaint within 15 working days of receiving it. At the same time (and subject to paragraph 4.2 above), the Monitoring Officer will send a copy of the complaint to the Subject Member in accordance with paragraph 1 of Annex 1 to these Arrangements.

#### **5. Criminal conduct**

**5.1.** In accordance with section 34 of the Localism Act 2011, it is a criminal offence if, without reasonable excuse, you:

- 5.1.1. fail to notify the Monitoring Officer of a Disclosable Pecuniary Interest before the end of 28 days beginning with the day you become, or are re-elected or re-appointed, a member or Co-opted Member of the Authority;
- 5.1.2. fail to notify the Monitoring Officer of a Disclosable Pecuniary

Interest before the end of 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;

- 5.1.3. fail to disclose a Disclosable Pecuniary Interest at a meeting, where such interest has not already been registered or notified to the Monitoring Officer;
- 5.1.4. fail to notify the Monitoring Officer of a Disclosable Pecuniary Interest before the end of 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;
- 5.1.5. take part in discussions or vote at meetings that relate to the Disclosable Pecuniary Interest, unless a dispensation has been granted;
- 5.1.6. 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 1 to these Arrangements.

## **6. Anonymous complaints**

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

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

The Independent Person must be consulted and have their views taken into account before the Borough Council makes a finding as to

whether a Member has failed to comply with the Code or decides on action to be taken in respect of that Member. At any other stage of the complaints process under these Arrangements, the Independent Person may be consulted by the Monitoring Officer and/or the Subject Member.

## **8. Preliminary tests**

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

**8.2.** In the event that the Independent Person is unavailable or unable to act, the time limits specified in paragraph 2 of Annex 1 may either be extended by the Monitoring Officer or the Monitoring Officer may act alone in taking the decision or action.

## **9. Informal resolution**

**9.1.** The Monitoring Officer, may consider that the complaint can be resolved informally at any stage in accordance with paragraph 6 of Annex 1 to these Arrangements and may do so in consultation with the Independent Person.

## **10. Investigation**

**10.1.** If the Monitoring Officer, decides that the complaint merits formal investigation, they will, normally within 30 working days of receiving it, appoint an Investigating Officer to undertake the investigation, and inform the Parties of the appointment.

**10.2.** The Investigating Officer will investigate the complaint in accordance with Annex 2 to these Arrangements.

## **11. Hearing**

**12.** If the Monitoring Officer, in consultation with the Independent Person, considers that informal resolution is not appropriate or is unlikely to be achieved, then they will convene a meeting of the Hearing Panel to determine the outcome of the complaint in accordance with Annex 3 to

these Arrangements.

### **13. Sanctions**

- 13.1.** 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 124 of Annex 3 to these Arrangements.

### **14. Appeal**

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

### **15. Discontinuance of Action**

- 15.1.** In the event that the Subject Member has died, is seriously ill or has ceased to be an elected member or co-opted member of the Borough or Parish/Town Council the Monitoring Officer may determine to end the complaints process.

### **16. Revision of these Arrangements**

- 16.1.** 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.

## **Annexes**

Annex 1 - Procedure on Receipt of A Complaint

Annex 2 - Procedure For Investigating The Complaint

Annex 3 - Hearing Panel Procedure

**ANNEX 1:****PROCEDURE ON RECEIPT OF A COMPLAINT****1. Notification of Complaint to Subject Member**

- 1.1.** Subject to any representations from the Complainant on confidentiality (see paragraph 5 below), the Monitoring Officer will notify the Subject Member and, if applicable, the Parish/Town Clerk of the complaint.
- 1.2.** The Monitoring Officer may invite the Subject Member [and, if applicable, the Parish/Town Clerk] to submit initial views on the complaint, which will be taken into account by the Monitoring Officer when they decide how to deal with the complaint (see paragraph 4 below).

**2. Preliminary Tests**

- 2.1.** The complaint will be assessed by the Monitoring Officer against the legal jurisdiction test in paragraph 2.2 and, if applicable, the local assessment criteria test in paragraph 2.4 below. The Monitoring Officer may assess the complaint in consultation with the Independent Person.
- 2.2.** Legal jurisdiction criteria test:
- 2.2.1. Did the alleged conduct occur before the adoption of the Code of Conduct? If the answer to this is 'Yes' the test is failed.
- 2.2.2. Was the person complained of a member of the Borough or Parish/Town Council at the time of the alleged conduct? If the answer to this is 'No' the test is failed.
- 2.2.3. Was the person complained of acting in an official capacity at the time of the alleged conduct? If the answer to this is 'No' the test is failed.
- 2.2.4. Did the alleged conduct occur when the person complained of

was acting as a member of another authority? If the answer to this is 'Yes' the test is failed.

- 2.2.5. If the facts could be established as a matter of evidence, could the alleged conduct be capable of supporting a breach of the Code of Conduct? If the answer to this is 'No' the test is failed.
- 2.2.6. Is the complaint about dissatisfaction with the Borough or Parish/Town Council's decisions, policies, priorities, processes and governance etc.? If the answer to this is 'Yes' the test is failed and the matter should be raised by the complainant directly with the Borough or Parish/Town Council, via their general complaints process.

### **2.3.** Local assessment criteria test:

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

- 2.3.1. The complaint is substantially the same as a complaint which has previously been made.
- 2.3.2. The complaint is anonymous, unless the Monitoring Officer is of the view, on the basis of corroborating evidence, that it is in the public interest to accept the complaint. The Monitoring Officer may consult the Independent Person.
- 2.3.3. No or insufficient information/evidence to substantiate the complaint has been submitted by the Complainant.
- 2.3.4. The complaint is malicious or relatively minor, and, in the view of the Monitoring Officer, the public interest would not be served by taking further action.
- 2.3.5. The Complainant is unreasonably persistent and/or vexatious.
- 2.3.6. The alleged misconduct happened more than 3 months prior to the submission of the complaint.
- 2.3.7. Dealing with the complaint would have a disproportionate effect on both public money and/or officers' and Members' time.



- 2.3.8. The circumstances have changed so much that there would be little benefit arising from an investigation or other action.
  - 2.3.9. 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.
  - 2.3.10. 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.
  - 2.3.11. The complaint is about a deceased person.
  - 2.3.12. The complaint is about a person who is no longer a Borough or Parish/Town Councillor or Co-opted Member.
- 2.4.** If the complaint fails one or more of the jurisdiction tests no further action will be taken by the Monitoring Officer and the complaint will be rejected. The Complainant will be notified accordingly with reasons, within 60 working days of receipt of the complaint by the Monitoring Officer. There is no right of appeal against the Monitoring Officer's decision.

### **3. Asking for additional information**

- 3.1.** The Monitoring Officer may ask the Complainant and the Subject Member [and, if applicable, the Parish/Town 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 seek to resolve the complaint informally in accordance with paragraph 6 below. Where the Subject Member or the Monitoring Officer or the Borough or Parish/Town Council make a reasonable offer of informal resolution, but the Complainant is not willing to accept this offer, the Monitoring Officer will take account of this in deciding whether the complaint merits formal investigation.

- 4.2.** The Monitoring Officer may refer the complaint for investigation when:
- 4.2.1. It is serious enough, if proven, to justify the range of sanctions available to the Audit, Governance and Standards Committee (see paragraph 12 of Annex 3 to these Arrangements), or
  - 4.2.2. 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/Town Council and there is no other avenue left to deal with it short of investigation. In considering this, the Monitoring Officer may take into account the time that has passed since the alleged conduct occurred.
- 4.3.** Where the complaint is referred for investigation, the Monitoring Officer will appoint an Investigating Officer who will conduct the investigation in accordance with the procedure at Annex 3 to these Arrangements.
- 4.4.** If the complaint identifies potential criminal conduct or a potential breach of other regulations by the Subject Member or any other person, the Complainant may be advised by the Monitoring Officer to report the complaint to the police or other prosecuting or regulatory authority. Alternatively, the Monitoring Officer will consider the complaint against the legal jurisdiction criteria test and if the complaint passes that test the Monitoring Officer may pass the complaint to the police. Where a complainant has been advised to refer a matter to the police or the Monitoring Officer has referred the matter to the police the complaints process under these Arrangements will be suspended, pending a decision/action by the police or other prosecuting or regulatory authority. Where the police or other prosecuting or regulatory authority decide to take no action on the complaint, the Monitoring Officer will lift the suspension and will apply the local assessment criteria test in paragraph 2.4 above.
- 4.5.** The Monitoring Officer may decide to take no action or to defer further action on the complaint whilst one or more of the following apply:
- 4.5.1. On-going criminal proceedings or a police investigation into the Subject Member's conduct.

- 4.5.2. Investigation cannot be proceeded with<sup>7</sup> 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.
  - 4.5.3. The investigation might prejudice another investigation or court proceedings.
  - 4.5.4. Genuine long term (3 months or more) unavailability of a key party.
  - 4.5.5. Serious illness of a key party.
- 4.6.** Normally within 90 working days of receipt of the complaint, the Monitoring Officer will notify the Complainant, Subject Member {and, if applicable, the Parish/Town 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 1):
- 4.6.1. Not to refer the complaint for investigation.
  - 4.6.2. Refer the complaint for investigation.
  - 4.6.3. Apply the informal resolution process either before or after an investigation.
  - 4.6.4. 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.

## **5. Confidentiality**

- 5.1.** If the Complainant has asked for their identity to be withheld, this request will be considered by the Monitoring Officer when they initially assess the complaint (see paragraph 2 above). The Monitoring Officer may consult the Independent Person.
- 5.2.** As a matter of fairness and natural justice, the Subject Member will usually be told who the Complainant is and will also receive details of the complaint. However, in exceptional circumstances, it may be appropriate to keep the Complainant's identity confidential or not disclose details of the complaint to the Subject Member during the early stages of an

investigation. The Monitoring Officer may withhold the Complainant's identity and/or details of the complaint if they are satisfied that there are reasonable grounds for believing that the Complainant or any other person (e.g. a witness):

- 5.2.1. Is either vulnerable or at risk of threat, harm or reprisal;
- 5.2.2. May suffer intimidation or be victimised or harassed;
- 5.2.3. Works closely with the Subject Member and is afraid of the consequences, e.g. fear of losing their job;
- 5.2.4. 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);
- 5.2.5. May receive less favourable treatment because of the seniority of the person they are complaining about in terms of any existing Borough or Parish/Town Council service provision or any tender/contract they may have with or are about to submit to the Borough or Parish/Town Council.

OR where early disclosure of the complaint:

- 5.2.6. May lead to evidence being compromised or destroyed; or
- 5.2.7. May impede or prejudice the investigation; or
- 5.2.8. Would not be in the public interest.

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

- 5.3.1. To facilitate transparency and ethical governance accountability: recognising that decision-making may be improved by constructive contributions from others;
- 5.3.2. To raise public awareness: disclosing the complaint or part of it may inform the community about matters of general concern;
- 5.3.3. 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;

5.3.4. Bringing out in the open serious concerns about the behaviour/conduct of an individual.

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

## **6. Informal resolution**

**6.1.** The Monitoring Officer may seek to resolve complaints informally at any stage in the process, whether without the need for an investigation, or before or after investigation has been commenced or concluded. In so doing, 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:

6.2.1. The Subject Member appears to have a poor understanding of the Code of Conduct and/or related Borough or Parish/Town Council procedures; or

6.2.2. There appears to be a breakdown in the relationship between the Complainant and the Subject Member; or

6.2.3. The conduct complained of appears to be a symptom of wider underlying conflicts which, if unresolved, are likely to lead to lead to further misconduct or allegations of misconduct; or

6.2.4. The conduct complained of appears common to a number of members of the Borough or Parish/Town Council, demonstrating a lack of awareness, experience or recognition of the particular provisions of the Code of Conduct and/or other Borough or

Parish/Town Council procedures etc.; or

- 6.2.5. The conduct complained of appears to the Monitoring Officer not to require a formal sanction; or
- 6.2.6. The complaint appears to reveal a lack of guidance, protocols and procedures within the Borough or Parish/Town Council; or
- 6.2.7. The Complainant and the Subject Member are amenable to engaging in an informal resolution; or
- 6.2.8. The complaint consists of allegations and retaliatory allegations between Members; or
- 6.2.9. The complaint consists of allegations about how formal meetings are conducted; or
- 6.2.10. The conduct complained of may be due to misleading, unclear or misunderstood advice from officers.

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

- 6.3.1. Training.
- 6.3.2. Conciliation/mediation.
- 6.3.3. Mentoring.
- 6.3.4. Apology.
- 6.3.5. Instituting changes to the Borough or Parish/Town Council's Procedures.
- 6.3.6. Conflict management.
- 6.3.7. Development of the Borough or Parish/Town Council's protocols.
- 6.3.8. Other remedial action by the Borough or Parish/Town Council.
- 6.3.9. Other steps (other than investigation) if it appears appropriate

to the Monitoring Officer.

- 6.4.** If the Subject Member is agreeable to and complies with the informal resolution process, the Monitoring Officer may report the matter to the Audit, Governance and Standards Committee and, if applicable, the Parish/Town Council for information, but will take no further action against the Subject Member.
  
- 6.5.** Where the Subject Member will not participate in the informal resolution process or if, having agreed to one or more actions under the informal resolution process, the Subject Member refuses or fails to carry out any agreed action, the Monitoring Officer will report the matter to the Audit, Governance and Standards Committee.

**COMPLAINT FORM**

[Separate Document]



**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:** *[insert]*

**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**

*[Summarise the Independent Person's views in numbered paragraphs]*

**Decision**

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

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

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

The Monitoring Officer considers that the alleged conduct, if proven, may amount to a breach of the following 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/Town or Town Council]*.
- Kent County Council's Monitoring Officer (*applicable only where the Subject Member is serving at both Borough 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].

**Signed:****Date****Print name:**

Monitoring Officer of Maidstone Borough Council Address:  
Maidstone Borough Council  
Maidstone House  
King Street  
Maidstone  
Kent ME15 6JQ

**ANNEX 2****PROCEDURE FOR INVESTIGATING THE COMPLAINT****PRELIMINARIES**

- 1.1.** The Investigating Officer will be appointed by the Monitoring Officer and will be aware of their obligations under UK General Data Protection Regulation and the Data Protection Act 2018, Equalities Act 2010, the Human Rights Act 1998 and other relevant legislation.
- 1.2.** The Investigating Officer is responsible for gathering all the facts, documents and, where applicable, for interviewing witnesses with knowledge of the facts, and they should remain objective, impartial and unbiased at all times.
- 1.3.** The Subject Member and the Complainant will be advised that the investigation is for the purposes of establishing facts and making recommendations as to whether the facts disclose a breach of the relevant code of conduct.
- 1.4.** Witnesses will be identified at the investigation stage and wherever possible their evidence supported by signed and dated witness statements and/or notes of 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.** The Investigating Officer will notify the Subject Member and the Complainant of their appointment, normally within 20 working days of being appointed and:
  - 1.6.1. Provide details of the complaint to the Subject Member;
  - 1.6.2. Detail the procedure to be followed in respect of the investigation

and the relevant timescales for responses and concluding the investigation;

- 1.6.3. Detail the sections of the Code of Conduct that appear to be relevant to the complaint;
  - 1.6.4. Request contact details of any potential witnesses;
  - 1.6.5. Require that confidentiality is maintained throughout the duration of the investigation and the procedures contemplated by this Annex 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 conclude their investigation at any point, where they are satisfied that they have sufficient information to enable them to report to the Monitoring Officer.

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

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

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

- 3.1.** During the course of an investigation, it may be necessary for the Monitoring Officer to consider whether the investigation should continue, for example, if:
- 3.1.1. Evidence suggests a case is less serious than may have seemed apparent originally and that a different decision might therefore have been made about whether to investigate it or not.
  - 3.1.2. It emerges during the investigation that the conduct under investigation was not conduct by the Subject Member in their role as a councillor but rather in a private capacity.
  - 3.1.3. Evidence indicates something which is potentially more serious which should be referred to the police.
  - 3.1.4. The Subject Member has died, is seriously ill, has resigned from the authority, or is otherwise reasonably unable to take part in the process for the foreseeable future and it is considered that it is no longer appropriate to continue with the investigation.
  - 3.1.5. The Subject Member has indicated that they wish to make a formal apology or take other action which should resolve the matter.
- 3.2.** In this context 'seriously ill' means that the councillor has a medical condition which would prevent them from engaging with the process of an investigation or a hearing for the foreseeable future. This might be a terminal illness or a degenerative condition. The Investigating Officer would be expected to establish this from a reliable independent and authoritative source other than the Subject Member. This would include where a councillor claims they are suffering from stress brought on by the investigation.
- 3.3.** Ultimately it will be for the Monitoring Officer to conclude whether the investigation should continue. In reaching that decision, the Monitoring Officer may consult with the Independent Person before deciding to defer or end the investigation.
- 3.4.** If the investigation has been deferred or ended the Subject Member and the complainant should be notified of the decision and where possible provided with timescales within which the matter will be dealt with if it has been deferred. This would not always be possible, however, particularly if the matter has been referred to the police.

## **4. Deferring an Investigation**

- 4.1.** An investigation should be deferred when any of the following conditions are met:
- 4.1.1. There are ongoing criminal proceedings or a police investigation into the Subject Member's conduct.
  - 4.1.2. The investigation might prejudice another investigation or court proceeding.
- 4.2.** An investigation may also need to be deferred for any of the reasons set out in paragraph 4.5 of Annex 1.
- 4.3.** When it is clear that there is an ongoing police or other investigation, or related court proceedings, the Investigating Officer should make enquiries about the nature of the police, or other investigation, or the nature of any court proceedings.
- 4.4.** If at any time during the investigation the Investigating Officer becomes aware of any circumstances that might require the investigation to be deferred, the Investigating Officer should notify the Monitoring Officer who should determine whether there should be a deferral. The Monitoring Officer may also wish to consult with the Independent Person.
- 4.5.** In some cases, it will be possible to investigate some of the alleged conduct, where there is no overlap with another investigation or court proceedings. The Investigating Officer should highlight those areas where investigation may be possible in the investigation plan.
- 4.6.** The Monitoring Officer or the Investigating Officer should ask the police, other relevant organisation or individual, in writing to keep them informed of the outcome of any police or other investigation, court proceedings or other relevant matter. Any important dates, for example of committal hearings should be noted in the investigation plan review.
- 4.7.** A deferred investigation should be kept under regular review, in the interests of natural justice.
- 4.8.** Once a decision is taken to begin the investigation again the Investigating Officer should notify in writing: the Subject Member; the complainant; the

relevant Independent Person; and the relevant Parish/Town council if the Subject Member is a Parish/Town councillor.

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

**5. The draft report**

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

- 5.2.** Following review by the Monitoring Officer, the draft report will be sent in confidence to the Subject Member and the Complainant (not witnesses) for comment. The draft report will be clearly labelled 'DRAFT' and "CONFIDENTIAL" and will detail:

- 5.2.1. The relevant provisions of the law and the relevant paragraphs of the Code of Conduct;
- 5.2.2. A summary of the complaint;
- 5.2.3. The Subject Member's response to the complaint;
- 5.2.4. Relevant information, explanations, etc, which the Investigation Officer has obtained in the course of the investigation;
- 5.2.5. A list of any documents relevant to the matter;
- 5.2.6. A list of those persons/organisations who have been interviewed;
- 5.2.7. A statement of the Investigating Officer's draft findings of fact and reasons;
- 5.2.8. 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;
- 5.2.9. That the Investigating Officer will present a final report once they have considered any comments received on the draft.

- 5.3.** Once the Investigating Officer has received any responses from the

Subject Member and/or the Complainant, they will finalise the draft report and make their final conclusions and recommendations to the Monitoring Officer. The report will be clearly labelled 'FINAL' and 'CONFIDENTIAL'.

## **6. Consideration of Investigating Officer's final report**

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

**6.2.** Where, on the basis of the Investigating Officer's report, the Monitoring Officer, having consulted with the Independent Person, concludes that there is no evidence of a failure to comply with the Code of Conduct, they will inform the Parties in writing that no further action is considered necessary. There is no right of appeal against the Monitoring Officer's decision.

**6.3.** Where, on the basis of the Investigating Officer's report, the Monitoring Officer, having consulted with the Independent Person, concludes that there is evidence of a failure to comply with the Code of Conduct, they will either:

6.3.1. Take no action; or

6.3.2. Seek informal resolution; or

6.3.3. Refer the matter for consideration by the Hearing Panel in accordance with the relevant procedure detailed in Annex 2 to these Arrangements.

## **7. Confidentiality**

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

**7.2.** Whilst non-members are not covered by the Code of Conduct (e.g., members of the public, witnesses and non-councillor complainants) if,



they do decide to publish details of the complaint they may expose themselves to liability in defamation (if information turns out to be untrue) or to other liabilities e.g., for breach of confidence, or for breach of data protection laws which could arise even where the information is true. Non-members may wish to seek their own legal advice.

**ANNEX 3****HEARING PANEL PROCEDURE****1. Pre-Hearing Procedure**

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

**2. Rules of procedure**

- 2.1.** The Hearing Panel consists of three voting elected Members when a Parish Councillor is the subject of a complaint drawn from the Audit, Governance and Standards Committee, one of whom shall be elected as Chairman plus one non-voting Parish Councilor.

- 2.2.** The quorum for a meeting of the Hearing Panel is three elected Members plus one non-voting Parish Councillor when a Parish Councillor is the subject of a complaint.
- 2.3.** The Independent Person's views must be sought and taken into consideration before the Hearing Panel takes any decision on whether the Subject Member's conduct constitutes a failure to comply with the Code of Conduct and as to any sanction to be taken following a finding of failure to comply with the Code of Conduct. The Independent Person should normally be present throughout the hearing (but not during the deliberations of the Hearing Panel in private) but in the event that this is not possible, may instead submit their views on the complaint to the Hearing Panel in writing.
- 2.4.** The legal requirements for publishing agendas, minutes and calling meetings, will apply to the Hearing Panel. The presumption is that the hearing will be held in public no earlier than 14 working days after the Monitoring Officer has copied the Investigating Officer's final report to the complainant and the Subject Member. Schedule 12A Local Government Act 1972 (as amended) will be applied to exclude the public and press from meetings of the Hearing Panel.
- 2.5.** Once a hearing has started, the Borough Council's Rules of Substitution do not apply to the Hearing Panel's proceedings.
- 2.6.** All matters/issues before the Hearing Panel will be decided by a simple majority of votes cast, with the Chairman having a second or casting vote.
- 2.7.** Where the Subject Member fails to attend the Hearing Panel and where the Hearing Panel is not satisfied with their explanation for their absence from the hearing, the Hearing Panel may in the first instance, have regard to any written representations submitted by the Subject Member and may resolve to proceed with the hearing in the Subject Member's absence and make a determination or, if satisfied with the Subject Member's reasons for not attending the hearing, adjourn the hearing to another date. The Hearing Panel may resolve in exceptional circumstances, that it will proceed with the hearing on the basis that it is

in the public interest to hear the allegations expeditiously.<sup>1</sup>

### **3. Right to be accompanied by a representative**

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

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

**4.1.** Subject to paragraph 4.2 below, the order of business will be as follows:

4.1.1. Elect a Chairman.

4.1.2. Apologies for absence,

4.1.3. Declarations of interests,

4.1.4. 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).

4.1.5. 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.

4.1.6. 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.

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

**4.2.** The Chairman may exercise their discretion and amend the order of

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

business, where they consider that it is expedient to do so in order to secure the effective and fair consideration of any matter.

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

## **5. Presentation of the complaint**

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

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

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

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

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

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

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

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

## **7. Summing up**

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

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

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

**8.1.** The Chairman will invite the Independent Person to express their view on



whether or not they consider that on the facts presented to the Hearing Panel, there has been a breach of the Code of Conduct.

## **9. Deliberations of the Hearing Panel to be in Private**

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

**9.2.** The Hearing Panel may at any time come out of private session and reconvene the hearing in public, in order to seek additional evidence from the Investigating Officer, the Subject Member or the witnesses. If further information to assist the Panel cannot be presented, then the Panel may adjourn the hearing and issue directions as to the additional evidence required and by whom.

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

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

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

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

10.3.1. What was the Subject Member's intention and did they know that they were failing to follow the Borough or Parish/Town Council's Code of Conduct?

- 10.3.2. Did the Subject Member receive advice from officers before the incident and was that advice acted on in good faith?
- 10.3.3. Has there been a breach of trust?
- 10.3.4. Has there been financial impropriety, e.g. improper expense claims or procedural irregularities?
- 10.3.5. What was the result/impact of failing to follow the Borough or Parish/Town Council's Code of Conduct?
- 10.3.6. How serious was the incident?
- 10.3.7. Does the Subject Member accept that they were at fault?
- 10.3.8. Did the Subject Member apologise to the relevant persons?
- 10.3.9. Has the Subject Member previously been reprimanded or warned for similar misconduct?
- 10.3.10. Has the Subject Member previously breached of the Borough or Parish/Town Council's Code of Conduct?
- 10.3.11. Is there likely to be a repetition of the incident?

**10.4.** Mitigating factors may include:

- 10.4.1. An honestly held, although mistaken, view that the action concerned did not constitute a failure to follow the provisions of the Code of Conduct, particularly where such a view has been formed after taking appropriate advice.
- 10.4.2. A councillor's previous record of good service.
- 10.4.3. Substantiated evidence that the councillor's actions have been affected by ill-health.
- 10.4.4. Recognition that there has been a failure to follow the Code.
- 10.4.5. Co-operation in rectifying the effects of that failure.
- 10.4.6. An apology to affected persons where that is appropriate.
- 10.4.7. Self-reporting of the breach by the councillor.



10.4.8. Compliance with the Code since the events giving rise to the complaint.

**10.5.** Aggravating factors may include:

10.5.1. Dishonesty or breaches of trust.

10.5.2. Trying to gain an advantage or disadvantage for themselves or others.

10.5.3. Bullying.

10.5.4. Continuing to deny the facts despite clear contrary evidence.

10.5.5. Seeking unfairly to blame other people.

10.5.6. Failing to heed appropriate advice or warnings or previous findings of a failure to follow the provisions of the Code.

10.5.7. Persisting with a pattern of behaviour which involves repeatedly failing to abide by the provisions of the Code.

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

**Final Decision**

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

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

**10.9.** Having taken into account the Independent Person, the Subject Member and the Monitoring Officer's representations on the application of sanctions, the Hearing Panel will reconvene the hearing in public and the

Chairman will announce:

- 10.9.1. 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.
- 10.9.2. The sanctions (if any) to be applied.
- 10.9.3. The recommendations (if any) to be made to the Borough or Parish/Town Council or Monitoring Officer.
- 10.9.4. That there is no right of appeal against the Panel's decision and/or recommendations.

## **11. Range of possible sanctions**

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

- 11.1.1. Report its findings in respect of the subject member's conduct to the Council (or the relevant Parish Council).
- 11.1.2. Issue (or recommend to the Parish Council to issue) a formal censure (i.e., the issue of an unfavourable opinion or judgement or reprimand).
- 11.1.3. Recommend to the leader of the authority that the Subject Member be removed from positions of responsibility.
- 11.1.4. Instruct the Monitoring Officer to (or recommend that the Parish Council) arrange training for the Subject Member.
- 11.1.5. Recommend to Council (or recommend to the Parish Council) that the Subject Member be removed from all outside appointments to which they have been appointed or nominated by the authority (or by the parish Council).
- 11.1.6. Recommend to Council (or recommend to the Parish Council) that it withdraws facilities provided to the Subject Member by the authority for a specified period, such as a computer, website and/or email and internet access.

- 11.1.7. Recommend to Council (or recommend to the Parish Council) that it excludes the Subject Member from the authority's offices or other premises for a specified period, with the exception of meeting rooms as necessary for attending Council, committee and sub-committee meetings, and/or restricts contact with officers to named officers only.
  - 11.1.8. If relevant recommend to Council that the Subject Member be removed from their role as leader of the authority.
  - 11.1.9. If relevant recommend to the secretary or appropriate official of a political group that the councillor be removed as group leader or other position of responsibility.
  - 11.1.10. Recommend that the Subject Member make an apology in respect of the conduct or take some other action to resolve the matter.
- 11.2.** Where the Subject Member is a Parish or Town councillor, the matter is referred back to their Council to say that a breach of the Code has been found and with a recommended sanction. The Town or Parish Council must then meet to consider whether to impose that sanction or to replace it with another relevant sanction. They cannot overturn the finding that there has been a breach of the Code and if they wish to impose a different sanction they should seek advice from the clerk and/or the Monitoring Officer. The panel should also ask the Parish or Council to report back to the monitoring officer within three months to confirm that they have met to discuss the sanction, and if necessary, to write again once the sanction has been fulfilled.
- 11.3.** Note that under the Code of Conduct failure to comply with a sanction may of itself be a breach of the Code.
- 11.4.** The Hearing Panel has no power to suspend or disqualify the Subject Member or to withdraw basic or special responsibility allowances.

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

## **12. Publicising the Findings**

- 12.1.** The Monitoring Officer should arrange for a decision notice to be published on the website of any authorities concerned. A template decision notice is appended which may be used for these purposes.
- 12.2.** If the panel finds that the Subject Member did not fail to follow the authority's Code of Conduct, the public summary must say this and give reasons for this finding.
- 12.3.** If the panel finds that the Subject Member failed to follow the Code but that no action is needed, the public summary should:
- 12.3.1. Say that the councillor failed to follow the Code, but that no action needs to be taken.
  - 12.3.2. Outline what happened.
  - 12.3.3. Give reasons for the panel's decision not to take any action.
- 12.4.** If the panel finds that a councillor failed to follow the Code and it imposed or recommended a sanction or other action, the public summary should:
- 12.4.1. Say that the councillor failed to follow the Code.
  - 12.4.2. Outline what happened.
  - 12.4.3. Explain what sanction has been imposed.
  - 12.4.4. Give reasons for the decision made by the panel.
- 12.5.** The panel's reports and minutes should be available for public inspection in the same way as other local authority committee papers.
- ## **13. Appeals**
- 13.1.** Given that the framework and sanctions are meant to be light-touch and proportionate, there is no right of appeal against a decision on a Code of Conduct complaint.

## **TEMPLATE - DECISION NOTICE (of Hearing Panel)**

### **Complaint No:** *[insert]*

On *[insert date]*, the Hearing Panel of Maidstone Borough Council considered a report of an investigation into 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 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
- Monitoring Officer
- [Clerk to the xxxx Parish/Town Council];

- Kent County Council's Monitoring Officer *[applicable only where the Councillor serving at both Borough 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]*.

**Signed:**

Date:

**Print name:**

Chairman of the Hearing Panel