

PART 9.2 - ARRANGEMENTS FOR DEALING WITH CODE OF CONDUCT COMPLAINTS UNDER THE LOCALISM ACT 2011

1. CONTEXT

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

2. INTERPRETATION

2.1 **‘District Council’** means the District Council of Folkestone and Hythe.

2.2 **‘Code of Conduct’** means the Code of Conduct, which the District (and Parish Council) has adopted under section 27(2) of the Localism Act 2011.

2.3 **‘Complainant’** means a person who has submitted a complaint, in accordance with these Arrangements, alleging that a Subject Member has breached the Code of Conduct.

2.4 **‘Disclosable Pecuniary Interest’** means those disclosable pecuniary interests that meet the definition prescribed by regulations (as amended from time to time), as set out in Annex 2 to the Code of Conduct.

2.5 **‘Independent Person’** means a person, or persons, appointed by the District Council under section 28(7) of the Localism Act 2011:

- a) Whose views are to be sought and taken into account by the Council before a decision is made on an allegation that it has decided to investigate and whose views may be sought by the Councillor at any other stage.
- b) Who may be consulted by the Subject Member about the complaint.

2.6 **‘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 District Council, an officer of another authority or an external investigator.

2.7 **‘Monitoring Officer’** is a senior officer of the District 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 District Council nominated by the Monitoring Officer to act on their behalf.

2.8 **‘Parish Council’** means the relevant parish/town council within the District of Folkestone and Hythe.

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

2.10 'Subject Member' means an elected member or co-opted member of the District [or Parish Council], against whom a complaint has been made alleging a breach of the Code of Conduct.

3. APPOINTMENT OF INDEPENDENT PERSON(S)

3.1 The District Council shall appoint the Independent Person(s) (and any substitute), in accordance with the requirements of section 27 (7) of the Localism Act 2011, and the Local Authorities (Standing Orders) (England) (Amendment) Regulations 2015 upon such terms as to remuneration and expenses as may be determined by the District Council from time to time.

3.2 The Independent Person(s) shall be treated as if they were a member of the District Council for the purposes of the District 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 the end of Annex 1 to these Arrangements. 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. ., . Complaints can also be made using the online form, which can be found at <https://www.folkestone-hythe.gov.uk/your-council/your-councillors/complaints-against-councillors>

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 10 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 1 to these Arrangements.

4.4 The Monitoring Officer will consider the complaint against the criteria set out in Annex 2 to assess whether there is merit in taking the complaint forward. If the complaint fails to meet either the legal jurisdiction or local assessment criteria the complaint will be rejected. The Monitoring Officers decision is final and there is no appeal.

4.5 The Monitoring Officer will consider the representations made and form a view on whether the matter has merit or is capable of being resolved informally and may consult with the Independent Person before notifying the Complainant of the conclusions.

4.6 The times will vary according to the number and content of background documents for consideration but usually the Monitoring officer would seek to conclude this process and notify the decision within 350 working days

5. CRIMINAL CONDUCT

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

- a) Fails 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) Fails 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) Fails to disclose a Disclosable Pecuniary Interest at a meeting, where such interest has not already been registered or notified to the Monitoring Officer;
- d) Fails to notify the Monitoring Officer of a Disclosable Pecuniary Interest within 28 days beginning with the day it is disclosed 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 1 to these Arrangements.

6. ANONYMOUS COMPLAINTS

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

The Independent Person must be consulted and have his/her 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, put the complaint through a number of preliminary tests, in accordance with paragraph 1 of Annex 1 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 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

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 consult 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

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

12. SANCTIONS

Where a Subject Member has been found by the Audit and Governance Committee to have breached the Code of Conduct, the Audit and Governance Committee may apply any one or more sanctions in accordance with paragraph 4 of Annex 3 to these Arrangements.

13. APPEAL

There is no right of appeal for the Complainant or the Subject Member against decisions of either the Monitoring Officer or the Audit and Governance Committee.

14. REVISION OF THESE ARRANGEMENTS

The District Council may, by resolution, agree to amend these Arrangements and has delegated to the Monitoring Officer, and the Audit and Governance Committee, 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.

15. Discontinuance of Action

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

ANNEX 1 – PROCEDURE ON RECEIPT OF A COMPLAINT

1. PRELIMINARY TESTS

1.1 The complaint will be assessed by the Monitoring Officer against the legal jurisdiction test in paragraph 1.2 below and, if applicable, the local assessment criteria test in paragraph 1.3 below. The Monitoring Officer may assess the complaint in consultation with the Independent Person.:

1.2 Legal jurisdiction criteria test:

- a) Did the alleged conduct occur before the adoption of the Code of Conduct? If the answer to this is 'yes' the test is failed.
- b) Was the person complained of a member of the District or Parish Council at the time of the alleged conduct? If the answer to this is 'no' the test is failed.
- c) Was the person complained of acting in an official capacity at the time of the alleged conduct? If the answer to this is 'no' the test is failed.
- d) Did the alleged conduct occur when the person complained of was acting as a member of another authority? If the answer to this is 'yes' the test is failed.
- e) If the facts could be established as a matter of evidence, could the alleged conduct be capable of a breach of the Code of Conduct? If the answer to this is 'no' the test is failed.
- f) The complaint is about dissatisfaction with the District or Parish Council's decisions, policies and priorities, etc. If the answer to this is 'yes' the test is failed.

1.3 Local assessment criteria test:

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

- a) The complaint is substantially the same as a complaint that has previously been made;
- b) The complaint is anonymous, unless the Monitoring Officer is of the view, on the basis of corroborating evidence that it is in the public interest to accept the complaint. The Monitoring Officer may consult the Independent Person.
- c) No or insufficient information/evidence to substantiate the complaint has been submitted by the Complainant;
- d) The complaint is malicious, 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 District or Parish Councillor or Co-opted Member.

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, normally within 30 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, which will be taken into account by the Monitoring Officer when they decide how to deal with the complaint (see paragraph 4 below).

3. ASKING FOR ADDITIONAL INFORMATION

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 In appropriate cases, the Monitoring Officer may seek to resolve the complaint informally, without the need for an investigation [or following an

investigation] (see paragraph 6 below). Where the Subject Member or the Monitoring Officer or the District or 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, may refer the complaint for investigation when:

- a) It is serious enough, if proven, to justify the range of sanctions available to the Audit and Governance Committee (see paragraph 4 of Annex 3 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 District 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 may appoint an Investigating Officer who will conduct the investigation in accordance with the procedure at Annex 2 to these Arrangements.

4.4 If the complaint identifies criminal conduct or 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, he may pass the complaint to the police. Where a Complainant has been advised to refer a matter to the police, or the Monitoring Officer has referred the matter to the police, the complaints process under these Arrangements will be suspended, pending a decision/action by the police or other prosecuting or regulatory authority. Where the police or other prosecuting or regulatory authority decide to take no action on the complaint, the Monitoring Officer will lift the suspension and in consultation with the Independent Person will apply the local assessment criteria test in paragraph 1.4 above.

4.5 The Monitoring Officer may decide to 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;
- 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 Normally within 60 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 below:

- 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 Audit and Governance Committee; or
- e) To refer the complaint to the relevant political group leader for action.

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 assesses 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 District or Parish Council service provision or any tender/contract they may have with, or are about to submit to the District 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 If the Monitoring Officer decides to refuse the Complainant's request for confidentiality, they will offer the Complainant the option to withdraw their complaint. The Complainant will be notified of the Monitoring Officer's decision, with reasons, by the Monitoring Officer. There is no right of appeal against the Monitoring Officer's decision to refuse the Complainant's request for confidentiality.

6. INFORMAL RESOLUTION

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

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

- a) The Subject Member appears to have a poor understanding of the Code of Conduct and/or related District or 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 District or Parish Council, demonstrating a lack of awareness, experience or recognition of the particular provisions of the Code of Conduct and/or other District or Parish Council procedures, etc; or
- e) The conduct complained of appears to the Monitoring Officer not to require a formal sanction; or
- f) The complaint appears to reveal a lack of guidance, protocols and procedures within the District or [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 District or 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 District or Parish Council's procedures;
- f) Conflict management;
- g) Development of the District or Parish Council's protocols;
- h) Other remedial action by the District or Parish Council;

- i) Other steps (other than investigation), if it appears appropriate to the Monitoring Officer.

- 6.4** If the Subject Member is agreeable to, and complies with, the informal resolution process, the Monitoring Officer will report the matter to the Audit and Governance Committee and, if applicable, the Parish 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 and Governance Committee.

Councillors' Code of Conduct Complaint Form

Your Details

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

Your address and contact details will not usually be released, unless it is necessary to deal with your complaint. However, we will tell the following people that you have made this complaint:-

The member(s) you are complaining about;
The Monitoring Officer;
The parish or town clerk (if applicable).

We will provide them with your name and a summary of your complaint. In certain circumstances, it may be necessary or appropriate for us to give them full details of your complaint, if this enables us to deal with it. If you have serious concerns about your name and a summary, or details, of your complaint being released, please complete section 5 of this form.

Title:	
First name:	
Last name:	
Address:	
Daytime telephone:	
Evening telephone:	
Mobile telephone:	
Email address:	

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

- ☐ Member of the public
- ☐ An elected or co-opted member of an authority
- ☐ An independent member of the Audit and Governance Committee
- ☐ An appointed Independent Person for the purposes of the Localism Act 2011
- ☐ Member of Parliament
- ☐ Local authority Monitoring Officer

- ☐ Other council officer or authority employee
- ☐ Other (please give details) _____

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

Title	First name	Last name	Council or authority name

4. Please explain, in this section, what the councillor has done that you believe breaches the Code of Conduct.

If you are complaining about more than one councillor, you should clearly explain what each individual person has done that you believe breaches the Code of Conduct.

It is important that you provide all the information you wish to have taken into account by the Monitoring Officer when s/he decides whether to take any action on your complaint. For example:

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

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

5. Only complete this section if you are requesting that your identity is kept confidential.

In the interests of fairness and natural justice, we believe that members, who are the subject(s) of a complaint, have a right to know who has made the complaint and be provided with a summary of the complaint. We are unlikely to withhold your identity, or the details of your complaint, unless you have good reason to believe that we should.

Please note that requests for confidentiality, or requests for suppression of complaint details, will not automatically be granted. The Monitoring Officer will consider the request alongside the substance of your complaint. We will then contact you with the decision. If your request for confidentiality is not granted, we will usually allow you the option of withdrawing your complaint.

However, it is important to understand that, in certain exceptional circumstances, where the matter complained about is very serious, we can proceed with an investigation or other action and disclose your name, even if you have expressly asked us not to.

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

- 6. Complaints must be submitted in writing. This includes fax and electronic submissions. However, in line with the requirements of the Equality Act 2010, we can make reasonable adjustments to assist you if you have a disability that prevents you from making your complaint in writing. We can also help if English is not your first language.**

If you need any support in completing this form, please let us know as soon as possible by telephoning 01303 853000.

Signed: _____

Date: _____

Return address: The Monitoring Officer
Folkestone and Hythe District Council
Civic Centre
Castle Hill Avenue
Folkestone
Kent
CT20 2QY

ANNEX 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 UK GDPR and 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. f
- 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** 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 throughout the duration of the investigation and the procedures contemplated by this Annex and that details of the complaint are not disclosed to any third party, unless disclosure is to a representative, witness, immediate family members or otherwise as may be required by law or regulation. However, the fact that an investigation is being conducted does not need to remain confidential.**1.7** It may be necessary for the Investigating Officer to agree with the Subject Member which documents will be submitted in evidence. This will generally include documents that will be relied on, or in support of, the Subject Member's case and which are relevant to the complaint.

- 1.8 The Investigating Officer may conclude their investigation at any point, where they are satisfied that they have sufficient information to enable them to report to the Monitoring Officer or Audit and Governance Committee.
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 have been given. While that means that the Investigating Officer may consider other parts of the Code than those initially considered if they are relevant to the matter in hand, they may also find evidence of a possible breach that does not directly relate to the allegation being investigated. If this happens, the Investigating Officer should tell the person they obtained the information from that they cannot investigate the possible breach as part of their existing investigation. The Investigating Officer should advise them that they are able to make a separate complaint to the Monitoring Officer
3. Referring Cases Back to the Monitoring Officer
- 3.1 During the course of an investigation, it may be necessary for the Monitoring Officer to consider whether the investigation should continue, for example, if:
- (a) Evidence suggests a case is less serious than may have seemed apparent originally and that a different decision might therefore have been made about whether to investigate it or not.
 - (b) It emerges during the investigation that the conduct under investigation was not conduct by the Subject Councillor in their role as a Councillor but rather in a private capacity.
 - (c) Evidence indicates something which is potentially more serious which should be referred to the police.
 - (d) The Subject Councillor has died, is seriously ill, has resigned from the authority or is otherwise reasonably unable to take part in the process for the foreseeable future and it is considered that it is no longer appropriate to continue with the investigation.
 - (e) The Subject Councillor 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 Councillor. 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 Councillor and the complainant should be notified of the decision and where possible provided with timescales within which the matter will be dealt with if it has been deferred. This would not always be possible, however, particularly if the matter has been referred to the police.

4. Deferring an Investigation

- 4.1 An investigation should be deferred when any of the following conditions are met:
 - (a) There are ongoing criminal proceedings or a police investigation into the Subject Member's conduct.
 - (b) The investigation might prejudice another investigation or court proceedings.
- 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 councillor, the complainant, the relevant Independent Person and the relevant town or parish council of the Subject councillor is a town or parish 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 and/or when the Investigating Officer is satisfied that they have sufficient information, or has obtained as much information as is likely to be reasonably capable of being obtained, the Investigating Officer will issue a draft report (clearly labelled DRAFT AND CONFIDENTIAL), to the Monitoring Officer, for review.

- 5.2 Following review of the draft report 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 marked 'draft and 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.

- 5.3 Once the Investigating Officer has received any responses received 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 take no action or seek informal resolution or refer the matter for consideration by the Audit and Governance Committee in accordance with the relevant procedure detailed in this Annex.

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 complaints) 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 PROCEDURE

1. RULES OF PROCEDURE

- 1.1** These rules of procedure shall apply to the Audit and Governance Committee and the Joint Standards Hearing Committee when considering the Investigating Officer's report under these arrangements.
- 1.2** Where the Subject Member is a Parish Councillor the hearing will be conducted by the Joint Standards Hearing Committee. The Joint Committee consists of two voting elected district councillors drawn from the Audit and Governance Committee and two voting parish/town representatives appointed by the parish/town councils. Reference to the Audit and Governance Committee in these arrangements shall be deemed, where appropriate, to be a reference to the Joint Standards Hearing Committee.
- 1.3** The quorum for a meeting of the Audit and Governance Committee, under these rules of procedure, is two elected Members. The quorum for a meeting of the Joint Standards Hearing Committee is two, with a district councillor and parish/town representative present. The Chairship of the joint committee shall alternate between a district councillor and a parish/town representative, with the Chairship taken first by a district councillor.
- 1.4** The Independent Person's views must be sought and taken into consideration before the Audit and Governance Committee 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 Audit and Governance Committee in private) but in the event that this is not possible, may submit their views on the complaint to the Audit and Governance Committee in writing instead.
- 1.5** The legal requirements for publishing agendas, minutes and calling meetings, will apply to the Audit and Governance Committee. 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 of the Local Government Act 1972 (as amended) may be applied where it is necessary to exclude the public and press from meetings of the Audit and Governance Committee.
- 1.6** Once a hearing has started, the District Council's rules of substitution do not apply to the Audit and Governance Committee proceedings.
- 1.7** All matters/issues before the Audit and Governance Committee will be decided by a simple majority of votes cast, with the Chair having a second or casting vote.
- 1.8** Where the Subject Member fails to attend the Audit and Governance Committee and where the Audit and Governance Committee is not satisfied with their explanation for their absence from the hearing, the Audit and

Governance Committee 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 Audit and Governance Committee 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.

2. RIGHT TO BE ACCOMPANIED BY A REPRESENTATIVE

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.

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 Chair (in the case of the Audit and Governance Committee, only if the Chair and Vice-Chair are absent);
- 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 1.8 above);
- e) Introduction by the Chair, of members of the Audit and Governance Committee, 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 Chair may exercise their discretion and amend the order of business, where they consider that it is expedient to do so in order to secure the effective and fair consideration of any matter.

3.3 The Audit and Governance Committee 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 Audit and Governance Committee 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 Audit and Governance Committee may question the Subject Member and any witnesses called by the Subject Member.

3.6 Summing up

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

3.7 Views/Submissions of the Independent Person

The Chair will invite the Independent Person to express his/her view on whether he/she considers that, on the facts presented to the Audit and Governance Committee, there has been a breach of the Code of Conduct or no breach as the case may be.

3.8 Deliberations of the Audit and Governance Committee

- 3.8.1(a)** The Audit and Governance Committee 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.
- 3.8.1(b)** Prior to reaching a decision, the Audit and Governance Committee will consider the views expressed by the Independent Person, including any views on sanctions to be applied and/or recommendations to the District or Parish Council or Monitoring Officer.
- 3.8.1(c)** Where the complaint has a number of aspects, the Audit and Governance Committee may reach a finding, apply a sanction and/or make a recommendation on each aspect separately.

- 3.8.1(d)** The Audit and Governance Committee will make its decision on the balance of probability, based on the evidence before it during the hearing.
- 3.8.1(e)** The Audit and Governance Committee may at any time come out of private session and reconvene the hearing in public (or in private if Schedule 12A Local Government Act 1972 (as amended) is applied to exclude the public and press from the meeting of the Hearing Panel), in order to seek additional evidence from the Investigating Officer, the Subject Member or the witnesses. If further information, to assist the committee, cannot be presented, then the committee may adjourn the hearing and issue directions as to the additional evidence required and by whom.
- 3.8.1(f)** If evidence presented to the Audit and Governance Committee highlights other potential breaches of the District or Parish Council's Code of Conduct, then the Chair will outline the committee's concerns and recommend that the matter be referred to the Monitoring Officer as a new complaint.
- 3.8.2(a)** Having deliberated on its decision and/or recommendations and the application of any sanctions, the Audit and Governance Committee will reconvene the hearing in public (or in private if Schedule 12A Local Government Act 1972 (as amended) is applied to exclude the public and press from the meeting of the Hearing Panel) and the Chair will announce that on the facts presented, the committee considers that there has been a breach of the Code of Conduct, or no breach, as the case may be. The Chair will announce the sanctions the committee is minded to apply and/or any recommendations to the District or Parish Council and/or Monitoring Officer.
- 3.8.2(b)** The Chair will invite the Independent Person, the Subject Member and the Monitoring Officer to make their representations as to whether any sanctions should apply and what form they should take. The Independent Person will be invited to express their view on any recommendations to the District or Parish Council or Monitoring Officer.
- 3.8.2(c)** Having heard the representations/views, the Audit and Governance Committee will adjourn and deliberate in private.
- 3.8.3** Having deliberated on its decision and/or recommendations and the application of any sanctions, and having taken into account the Independent Person's views, the Audit and Governance Committee will reconvene the hearing in public and the Chair will announce:
- a) the Audit and Governance Committee decision as to whether or not the Subject Member has failed to comply with the Code of Conduct, and the principal reasons for the decision;
 - b) the sanctions (if any) to be applied;
 - c) the recommendations (if any) to be made to the District or Parish Council or Monitoring Officer;

- d) that there is no right of appeal against the Audit and Governance Committee decision and/or recommendations.

4. RANGE OF POSSIBLE SANCTIONS OR OTHER ACTIONS

4.1 Subject to paragraph 4.4 below, where the Audit and Governance Committee 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 District or 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 District or Parish Council, that they be removed from committees or sub-committees of the Council;
- c) Recommending to the Leader of the District 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 District or Parish Council that the Subject Member be removed from all outside appointments to which they have been appointed or nominated by the District or Parish Council;
- f) Recommending to the District or 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 for a specified period;
- g) Recommending to the District or Parish Council the exclusion of the Subject Member from the District or Parish Council's offices or other premises, with the exception of meeting rooms as necessary for District or Parish Council committee and sub-committee meetings; and/or restricts contact with officers to named officers only for a specified period;
- h) Reporting the committee's findings to the District or 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 District or 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 committee considers appropriate.
- m) Require that either alongside another sanction or separately the councillor be required to offer a public apology to the complainant or other party affected.
- n) If relevant recommend to Council that the Subject Councillor be removed from their role as leader of the authority.

Where the Subject Councillor 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 Town 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.

- 4.2** The Audit and Governance Committee has no power to suspend or disqualify the Subject Member or to withdraw basic or special responsibility allowances.
- 4.3** The Audit and Governance Committee may specify that any sanction takes effect immediately or takes 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 Audit and Governance Committee will ensure that the application of any sanction is reasonable and proportionate to the Subject Member's behaviour. The Audit and Governance Committee 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 District or 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 District or 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 District or Parish Council's Code of Conduct?
- k) Is there likely to be a repetition of the incident?

4.5 Mitigating factors may include:

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

4.6 Aggravating factors may include:

- (a) Dishonesty or breaches of trust.
- (b) Trying to gain an advantage or disadvantage for themselves or others.
- (c) Bullying
- (d) Continuing to deny the facts despite clear contrary evidence.
- (e) Seeking unfairly to blame other people.

- (f) Failing to heed appropriate advice or warnings or previous findings of a failure to follow the provisions of the Code.
- (g) Persisting with a pattern of behaviour which involves repeatedly failing to abide by the provisions of the Code.

5. PUBLISHING THE FINDINGS

5.1 Within 10 working days of the committee's announcement of its decision and recommendations, the Monitoring Officer will publish the name of the Subject Member and a summary of the Audit and Governance Committee's decision and recommendations, and reasons for the decision and recommendations, on the District Council's website.

5.2 Within 10 working days of the announcement of the Audit and Governance Committee'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 (if appropriate);
- d) Kent County Council's standards committee (applicable only where the Subject Member is serving at both District and County level);

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

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

- (a) say that the Councillor failed to follow the Code, but that no action needs to be taken.
- (b) Outline what happened
- (c) Give reasons for the panel's decision not to take any action.

5.5 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:

- (a) Say that the Councillor failed to follow the Code.
- (b) Outline what happened.
- (c) Explain what sanction has been imposed.

- (d) Give reasons for the decision made by the panel.
- 5.6 The panel's reports and minutes should be available for public inspection in the same way of other local authority committee papers.

6. **Appeals**

- 6.1 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.