



# Agenda

Meeting: **Council**  
Date: **11 July 2012**  
Time: **8.00 pm**  
Place: **Council Chamber - Civic Centre Folkestone**

To: **All Members of the Council**

**YOU ARE HEREBY SUMMONED** to attend a meeting of the Council on the date and at the time and place shown above. The meeting will be open to the press and public.

Anyone who wishes to have information on any matter arising on the Agenda which is not fully covered in these papers is requested to give notice prior to the meeting to the Chairman or appropriate officer.

Chief Executive

1. **Apologies for absence**
2. **Declarations of interest**

Members of the Council should disclose personal or prejudicial interest/s in any item/s on this agenda.

3. **Minutes (Pages 1 - 10)**

To receive the minutes of the meeting of the council held on 20 June 2012 and to authorise the Chairman of the Council to sign them as a correct record.

4. **Chairman's communications**

**Queries about the agenda? Need a different format?**

Contact Lorraine Burley – Tel: 01303 853411  
Email: [committee@shepway.gov.uk](mailto:committee@shepway.gov.uk) or download from our website  
[www.shepway.gov.uk](http://www.shepway.gov.uk)

5. **Petitions**

There are no petitions to be presented.

6. **Petitions requiring debate**

There are no petitions requiring debate.

7. **Questions from the public**

There are no questions from the public.

8. **Questions from councillors**

(Questions can be found on [www.shepway.gov.uk](http://www.shepway.gov.uk) from noon 2 days before the meeting. They can be found in the A-Z index under Q)

Up to 45 minutes is allowed for questions from councillors.

9. **Announcements of the Leader of the Council**

To receive a report from the Leader of the Council on the business of the cabinet and on matters that the leader considers should be drawn to the council's attention. The leader shall have 10 minutes to make his announcements.

The opposition group will have an opportunity to reply to the leader's remarks. The opposition group leader shall have 5 minutes to respond after which the Leader of the Council will have a right of reply. Any right of reply will be for a maximum duration of 5 minutes.

10. **Opposition business**

The People First Group has raised the following matter: The future role of Lydd Airport

Debates on opposition business shall be limited to 15 minutes. If the time limit is reached or the debate concludes earlier, the leader of the group raising the item shall have a right of reply.

The council shall:

- a) Note the issue raised and take no further action;
- b) Refer the issue to the cabinet or relevant overview and scrutiny committee, as the case may be for their observations before deciding whether to make a decision on the issue;
- c) Agree to examine the matter as part of a future scrutiny programme;
- d) Adopt the issue raised by opposition business provided that the decision so made is within the policy framework and budget.

11. **Localism Act 2011 - Adoption of New Standards Regime (Pages 11 - 66)**

**Report A/12/20** presents the matters that need to be adopted and decided to implement the new standards regime including a new code of conduct, arrangements for dealing with complaints and delegations.

12. **Proposed Procedure Rules (Pages 67 - 70)**

The constitutional advisory committee considered report CA/12/01 seeking a recommendation that the council adopt a procedure rule in the council, committee and executive procedure rules requiring a councillor to withdraw from the meeting when he/she has a Discloseable Pecuniary Interest or an Other Significant Interest as defined respectively in the statutory instrument and the proposed code of conduct. The views of the constitutional advisory committee will be reported to council as set out in **report A/12/21**.

13. **Motions on Notice**

The following motions have been placed on the agenda in the order received; up to 60 minutes shall be allowed for debates on motions on notice:

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## SHEPWAY DISTRICT COUNCIL

### **Minutes for the meeting of the Council held at the Council Chamber - Civic Centre Folkestone on Wednesday, 20 June 2012**

**Present:** Councillors Tristan Allen, Emily Arnold, Hugh Barker, Mrs Keren Belcourt, Mrs Ann Berry, Robert Bliss, George Bunting, Miss Susan Carey, Miss Pamela Carr (Vice-Chair), Alan Clifton-Holt, John Collier, Brian Copping, Ms Victoria Dawson, Malcolm Dearden, Anthony Dunning, Ellerby, Peter Gane, George, Clive Goddard, David Godfrey, Richard Grundy, Anthony Hills, Ms Janet Holben, Mrs Jennifer Hollingsbee (Chairman), Shane Lawrence, Rory Love, Michael Lyons, Paul Marsh, Philip Martin, David Monk, Peter Monk, Terence Mullard, Mrs Shirley Newlands, Alan North, David Owen, Richard Pascoe, Paul Peacock, Stuart Peall, David Stephenson, Russell Tillson, Roger West, Roger Wilkins and William Wimble

Apologies for Absence: Councillors Alan Ewart-James, Stan Hayward, Peter Simmons and Mrs Susan Wallace

#### 21. **Declarations of interest**

There were no declarations of interest.

#### 22. **Minutes**

The minutes of the meeting held on 21 March 2012 were submitted, approved as a true record and signed by the Chairman of the Council.

#### 23. **Chairman's communications**

The Chairman reported that since 21 March, she had represented the District at a number of events throughout Kent and South East London. However, the majority of her time had been taken up with local events including a concert by the Folkestone Choral Society; Folkestone Lions Club annual dinner; an exhibition at Folkestone Library on "A Town Unearthed: Folkestone before 1500" which was a three year community archaeology project that was working with the community to research and record the rich archaeological heritage and early history of Folkestone.

Other events in the period included:

**Folkestone and Hythe District Scouts annual awards** event at Brockhill; **Rail Summit at KCC**; **several visits to Brockhill** for performances and award ceremonies for young people; **the opening of the new British Red Cross Centre** in Canterbury; **opening of the Dymchurch toilets** – although they could not be opened (apparently they had been vandalised by using foreign objects etc in the locks!); **Basepoint, celebrating 10 years** – which had also been attended by Councillor Alan Clifton-Holt and our MP, Damian Collins; **Women of Kent luncheon**; **Royal Garden Party**; **several training seminars** – flooding, event health and safety, etc; **Hythe Town Concert Band** – opening of new storage centre at Saltwood Primary School which had been aided by the Community Chest; **meeting the County new local dignitaries** at Penshurst Place, the home of the Lord Lieutenant of Kent; **St Stephens Church Restoration** – heating, decorations and lighting which had also assisted by the

Community Chest; **LDF enquiry** – she had attended several sessions and although the Inspector raised some concerns, she believed council officers should be congratulated on the effort and time they had put into this enquiry; **Jubilee Celebrations** – she had been pleased to unveil the Crown on the Leas and congratulated all those who had been involved in such an amazing decoration for the District. She reported that it was one of only two such floral displays in the country.

The Chairman congratulated John Barber for his involvement with the very successful Airshow. She was sorry not to be able to attend due to personal circumstances but she had received glowing reports. She also understood that there would be an Airshow next year. The Chairman also congratulated all those who organised Jubilee events in all the towns and villages – it had certainly brought the community together.

The Chairman also reported on the **Public Involvement in Health Advisory Committee**. Members from County, Dover and Shepway met with Andrew Lansley to discuss the health reforms in Dover and Shepway as the districts were “leading the way nationally”. The Chairman recorded her many thanks to Councillor Mrs Pam Carr for leading the Shepway’s involvement, and to Councillor Michael Lyons for the support he had given.

Finally, she congratulated the **Dungeness RNLi volunteer lifeboat crew member Garry Clark** who had been awarded a Silver Medal for Gallantry -- one of the RNLi's highest honours – on 17 May 2012. This had been in recognition of his exemplary bravery and determination during the rescue of seven people from the yacht Liquid Vortex on 3 January 2012. **Chris Capon who had been awarded an MBE** in the Queen’s birthday honours list for service to local government and the community in Hythe, Kent.

The Chairman concluded by reminding the Council of the Olympic torch relay which was due to pass through the District on 18 July 2012. The organisers were still looking for marshalls for the event and the Chairman encouraged people to volunteer.

24. **Petitions**

There were no petitions for presentation.

25. **Questions from the public**

There were no questions from the public.

26. **Petitions requiring debate**

There were no petitions for debate.

27. **Questions from councillors**

A copy of the questions put and the answers given are at appendix 1 to the minutes.

**28. Announcements of the Leader of the Council**

The Leader opened by indicating that he had been very pleased to say that following an extensive consultation on our Parking Strategy the Cabinet had arrived at a conclusion that satisfied businesses, residents and visitors. The success of this consultation was highlighted by an amount of interest, representations and formal submissions to Shepway resulting in a fair and effective arrangement. He thanked the officers, the Cabinet member, his Council colleagues and Shepway residents and business for their wide ranging contributions. All suggestions were carefully considered and often adopted.

The Leader reported on another example of consultation, which was ongoing - the Romney Marsh Nuclear Research and Disposal Facility. The Council had no position on this but had enabled all marsh residents to have their say on whether an "expression of Interest" should be made. Papers had been circulated to every household and business on the Marsh.

The Leader was pleased to announce that XFOR had been awarded an Enforcement Contract covering Littering and Dog Fouling. They had achieved excellent results for other authorities including Maidstone. The Leader expected to see a significant improvement in the appearance of the District starting from the following month.

The Leader also reported that there had been massive crowds all over the country following the Olympic Torch bearers. He was sure that Shepway residents would be in force for their section from Hythe to Folkestone via, of course, the Principality of Sandgate on July 18. The Council had recruited a large number of volunteers to act as stewards along the route which included a number of councillors.

The Leader also added his thanks to John Barber for his part in organising the airshow.

The Leader of the Opposition responded by echoing the remarks made by the Leader in respect of the contributions made to the debate on the parking strategy by the former scrutiny sub-committees and also from the joint meeting of the current scrutiny committees. He especially thanked the Cabinet Member, Councillor Malcolm Dearden, for his role including taking the time to consider the substantial document submitted by the opposition. He also welcomed the consultation exercise in respect of the nuclear research and disposal plant. He believed that it was in the Council's interest not to close the door and indicated that he too would listen to the views of all Shepway residents, especially those on Romney Marsh. In respect of the Leader's report on the XFOR contract, Councillor Copping reiterated the concerns he had expressed about the fact that the district only had one dog warden at this time and urged the leader to review this position. He could not get excited about the forthcoming Olympics although he hoped that British athletes, including the local paralympian hopefuls, fared well in their respective sports. Councillor Copping also added

his thanks for those behind the airshow which had been a brilliant, and at times moving, day. It had been good for the town and he was already looking forward to next year's show.

Proposed by Councillor Robert Bliss  
Seconded by Councillor Rory Love and

**Resolved:**

**To receive and note the Leader of the Council's announcements.**

(Voting: For 40; Against 0; Abstentions 0).

29. **Opposition business**

There was no opposition business.

30. **Proposed rules for Working Groups and proposals for minuting the opposition leader's response to the leader's announcement at council**

Report A/12/16 presented the recommendations of the Constitutional Advisory Committee on proposed rules for working groups and proposals for minuting the opposition leader's response to the leader's announcements at council.

Proposed by Councillor Robert Bliss  
Seconded by Councillor Rory Love and

**Resolved:**

1. **To receive and note report A/12/16.**
2. **To agree the rules for working groups appended to this report.**
3. **To agree that the opposition leader's response to the leader's announcement to council is broadly minuted.**
4. **That if the opposition leader does not agree with the draft minute (which will be sent to him/her the following day) that the council minutes read "the opposition leader responded."**

(Voting: For 40; Against 0; Abstentions 0).

31. **Report from the Independent Remuneration Panel on Members' Allowances and Expenses**

Report A/12/17 recommended that council approve the adoption of a new members' allowance scheme for elected members of Shepway District Council. This report had been deferred from the meeting of the Council held on 9 May 2012. The Chairman of the Independent Remuneration Panel, Chris Harman, addressed the meeting briefly.

Proposed by Councillor Robert Bliss and  
Seconded by Councillor Rory Love



**That the report be referred back to the Independent Review Panel because the proposed increase in basic allowance was considered to be too high, with implications for other proposed special responsibility allowances.**

Amendment

Proposed by Councillor Paul Marsh and  
Seconded by Councillor Brian Copping

That the recommendations made by the Independent Remuneration Panel be agreed subject to

1. recommendation R6 being amended to read, "that the current ICT allowance be discontinued";
2. recommendation R7 being amended to read, "that the revised basic allowance be set at £4,250; and
3. recommendation R18 being deleted.

(Voting: For 2; Against 38; Abstentions 0).

The amendment was LOST.

Proposed by Councillor Robert Bliss  
Seconded by Councillor Rory Love and

**Resolved**

**That the report be referred back to the Independent Review Panel because the proposed increase in basic allowance was considered to be too high, with implications for other proposed special responsibility allowances.**

(Voting: For 38; Against 2; Abstentions 0).

**32. Schedule of meeting dates 2013/2014**

At its meeting on 9 May 2012 the council resolved (minute 11):

- To approve in future years a rolling two year schedule of meeting dates providing a firm schedule for year 1 and a provisional schedule for year 2.
- To receive for approval a provisional schedule of meeting dates for 2013/14 at the next available full council meeting.

In accordance with these resolutions, a provisional schedule of meetings for 2013/14 had been compiled and was appended to report A/12/18.

Proposed by Councillor Robert Bliss  
Seconded by Councillor Rory Love and

**Resolved:**

- 1. To receive and note report A/12/18.**
- 2. To approve and adopt the provisional schedule of meetings for 2013/14 appended to this report as appendix 1.**

(Voting: For 39; Against 0; Abstentions 0).

**33. Annual Overview and Scrutiny Programme 2012-13**

Report A/12/19 set out the proposed annual overview and scrutiny programme 2012/13 for endorsement by council.

Proposed by Councillor Peter Monk  
Seconded by Councillor George Bunting and

**Resolved:**

- 1. To receive and note report A/12/19.**
- 2. To endorse the annual overview and scrutiny programme for 2012/2013 set out in appendix 1.**

(Voting: For 39; Against 0; Abstentions 0).

**34. Motions on Notice**

There were no motions on notice.

## **Appendix 1**

### **Council Meeting – 20 June 2012 Councillors' Questions and Answers**

**1. To the Leader of the Council - Councillor Robert Bliss from Councillor Tony Hills**

What progress is the council making with the development of its Coastal Strategy?

**Response:**

Following receipt by Shepway District Council of the Shepway Coastal Recreation Strategy final report from the Tourism Company originally commissioned by economic regeneration, it was agreed by cabinet that a post of Foreshore Manager (or similar) would be with funding initially allocated for five years to support this. The primary focus of this role would be to examine the proposals in the report and develop and expand on the recommendations of the report, and so formulating an all encompassing coastal strategy and lead an innovative and robust plan for the Shepway coastline and associated communities.

An initial officer working group was established at the start of this year to drive forward this proposal. Subsequently an early consultation meeting was held with all coastal and town parishes in February to gain feedback, information and ideal needs of both the nature of the role and impact on the local community that this would or could bring in the broadest sense.

Following a recent senior management restructure, this piece of work and its strategic importance has been highlighted, and it has now been passed to the Head of Strategic Projects to lead the dynamic officer group in implementing this proposal over the coming months.

**2. To the Cabinet Member for Localism – Councillor Russell Tillson from Councillor Clive Goddard**

Is the Cabinet Member for Localism willing to accept an invitation from Lydd Town Council to explain and discuss the purpose and content of the proposed new Community Compact?

**Response:**

Yes and I am also happy to visit Lydd and indeed any other town or parish council.

**Supplementary:**

I thank the Cabinet Member for your reply. I am delighted that you are happy to come to Lydd. The particular issue of interest is the Community Payback scheme. Would the Cabinet Member tell us what Community Payback is about?

**Response:**

I am grateful to Councillor Goddard for giving me some earlier indication of the area of activity that he particularly wants me to discuss in Lydd. There are references made to Community Payback in the draft Community Compact document and Community Payback is very much in the spirit of Localism. I am very conscious of the problems of anti social behaviour suffered by the town and of the fact that the issue of Community Payback has been the subject of earlier questions and motions passed in this council chamber. In November 2011 the Council agreed to continue contact with the Kent Probation Service with a view to strengthening Shepway's use of Community Payback and to report back with details of agreed arrangements. Our officers have been working very hard on this and so I will now endeavour to do just that.

What is Community Payback? It is a part of community sentencing that sees offenders repay their debt to society by taking an active part in the improvement of their local community. Offenders are given between 40 and 300 hours of what was once known as Community Service and later Community Punishment. This sentence has to be fulfilled with 12 months at a minimum of 6 hours per week and those participating may be required to wear high visibility orange vests undertaking their tasks. I should, however, add that courts are often reluctant to impose community sentences and so the potential pool of qualifying offenders might in practice be quite small.

Offenders who meet the appropriate criteria are required to work within the community in order to help improve the look of the area. Street cleans ups, ground clearance and even general gardening projects as well as environmental preservation projects, landscaping and community building maintenance are all among the projects undertaken by groups of Community Payback offenders.

Meetings between officers and the Probation Service established that 63% of offenders participating in Community Payback in Shepway were working in charity shops and that there is obvious scope to expand the service into more visible community projects. Two methods are now being progressed. The first involves using groups of offenders under the close supervision of Probation Service supervisors to undertake specific activities such as painting

out graffiti, litter picking or painting. The second approach, which will be of particular interest to Councillor Goddard, assigns low risk offenders to a parish council or other organisation that in return undertakes the supervision. It is worth however noting that the Probation Service only provides the offenders and a supervisor and organisations using the service need to provide materials and any other personal protection equipment, conduct risk assessments, provide training and monitor the quality of the work done.

The Council is now aiming to make better use of the service and a Community Safety officer has been appointed as the single point of contact” for the Probation service. A memorandum of understanding between the council and the Probation Service has been drafted. Regular meetings with the Probation Service have been re-established. Tools and equipment such as litter pickers, paint brushes, paint and waste sacks have been supplied to the Probation service funded by the Community Safety partnership. Via the council’s website councillors and members of the public can now nominate projects for the Probation Service to undertake.

Groups of offenders under the direct supervision of the Probation Service have been used to: paint out graffiti on the Canterbury Road Recreation Ground; pick up litter from the beaches at Dungeness, Hythe, Sandgate and Folkestone; remove rust and paint from railings in St Leonards church in Hythe; renovate buildings a the Romney Marsh Countryside Project and dig trenches for rabbit fencing.

In addition, with the support of the Community Safety Officer, Sandgate Parish Council and Hythe Town Council have taken responsibility for the supervision of low risk offenders signing the offenders in and assigning tasks, which have included sweeping shingle off the promenade, clearing the beach of litter and dog fouling, shovelling snow and putting salt down on the pavements. They are effectively pilot schemes and the plan is to move towards rolling them out to any parish or town council interested and – most importantly – with the capacity to undertake supervision. A presentation was given to New Romney Town Council in January to explain how the town might better utilise the service and the range of tasks offenders can undertake.

The Community Payback Manager will ensure that any risk is assessed and documented prior to the start of the project. This will include Health and Safety risks and risk assessments to ensure the safety of the public. Probation’s Community Payback Officers would provide a briefing on project planning wherever it was required. Further officer assistance might include the coordination of actions, helping with supervision and providing and meeting the cost of some of the equipment. Offenders would normally be required to wear reflective Community Payback tabards or badges while on the project. While the selection of projects will be the subject of negotiations at a local

level, the final decision to include or exclude a project lies with the Kent Probation.

There are therefore potentially exciting opportunities here, although there are a few restrictions:

1. Not all projects will be deemed suitable and especially where there is a perceived safety risk to the public, the supervisor or even the offenders themselves.
2. Parish and Town Councils may find themselves responsible for the lion's share or even all of the funding so far as equipment and protective clothing are concerned.
3. Properly trained supervisors may be in short supply – and, as I understand it, all will need to be CRB checked if working with young offenders or vulnerable adults.
4. Offenders cannot be used for paid work – in other words, any task that could have been contracted out.
5. There are limits on the hours and conditions in which offenders can work and there are reports that the pool of potential offenders has dried up locally because of the reluctance of some courts to impose community sentences.
6. It may in practice prove difficult to implement a project through to its conclusion, as experience in Sandgate and elsewhere suggests that absenteeism is rife and council's have no obvious sanctions available to them to enforce compliance with the court's community punishment.

That stated, I know that our officers will offer every assistance to Lydd Town Council and to other parishes if they wish to pursue an interest in the scheme.

This report will be made public on 3 July 2012

**Folkestone**

Hythe & Romney Marsh  
Shepway District Council



Report number **A/12/20**

**To:** Council  
**Date:** 11 July 2012  
**Status:** Non-executive decision  
**Chief Executive:** Alistair Stewart  
**Cabinet Member:** Councillor Robert Bliss, Leader of the Council

**SUBJECT: LOCALISM ACT 2011 – ADOPTION OF NEW STANDARDS REGIME**

**SUMMARY:** This report presents the matters that need to be adopted and decided to implement the new standards regime including a new code of conduct, arrangements for dealing with complaints and delegations.

#### **REASONS FOR RECOMMENDATIONS:**

Council is asked to agree the recommendations in order to implement the new standards regime.

#### **RECOMMENDATIONS:**

1. To receive and note report A/12/20.
2. To adopt as from 12 July 2012 the Kent Model Code of Conduct as set out at Appendix 1 which deals with the conduct expected of members and co-opted members of this authority when they are acting in that capacity.
3. That the council puts in place, with effect from 12 July 2012 the arrangements contained within Appendix 2 under which allegations of non-compliance with the Code can be investigated and under which decisions can be made
4. To delegate the powers and functions set out in Appendix 3 to the Monitoring Officer
5. To adopt the terms of reference shown in Appendix 4 for the Audit and Compliance Committee
6. To agree the person specification and job – description of the Independent Person at Appendix 5.
7. To appoint one Independent Person and one reserve
8. To authorise the deputy chief executive in consultation with the chairman of Audit and Standards Committee to set the remuneration of the Independent Person and the reserve.
9. To authorise the Audit and Standards Committee to interview prospective candidates for the role of Independent Person and reserve and to make recommendations to council on the appointment
10. That a review of the regime be conducted within a year.

## **1. SUMMARY**

- 1.1 Under the provisions of the Localism Act 2011 the existing standards regime ceases to operate from midnight on 30 June 2012. The transitional arrangements are very limited.
- 1.2 The Act puts in place a system of requiring members to notify the Monitoring Officer of a new type of interests (the Disclosable Pecuniary Interest “DPI”) and requires him to maintain a public register of those interests. Additionally, the council must, with effect from 1 July 2012 adopt a new code of conduct and put in place arrangements for investigating allegations of breach and for making decisions in respect of those allegations.

## **2. INTRODUCTION AND BACKGROUND**

- 2.1 As a result of the recommendations of the Committee on Standards in Public Life the Local Government Act 2000 put in place a regime for regulating the conduct required of members. This was developed from the seven so called “Nolan Principles of standards in public life”. Central to the regime was a model code of conduct containing mandatory provisions which councils were required to adopt and also, procedures for dealing with complaints which were prescribed by law. This was all overseen by Standards for England (previously known as the Standards Board for England) which variously had regulatory, investigatory and advisory functions together with an overall co-ordinating role.
- 2.2 It was a manifesto commitment of the Conservative party which also featured in the publication “The Coalition – Our Programme for Government” to abolish the Standards Board Regime. Early indications that the review would result in the total abolition of a statutory standards regime for elected members have not materialised.
- 2.3 The vehicle for the delivery of the changes to the regime was the localism bill. Early drafts of the bill proposed the almost wholesale repeal of those parts of the Local Government Act 2000 dealing with standards. However, during the late stages of its passage through the parliamentary process the bill was significantly revised resulting in the requirement to have in place a formal standards regime but one which is much more locally determined but which still operates within a statutory framework.

## **3. FEATURES OF THE NEW ARRANGEMENTS**

- 3.1 As enacted the Localism Act 2011 (which received Royal Assent on 15 November 2011) puts in place a standards regime which included the following features and requirements:
  - A duty to promote and maintain high standards of conduct by members and co - opted members of the authority.



- A requirement to have a code of conduct dealing with the conduct that is expected of members and co-opted members when they are acting in that capacity
- A requirement for the code of conduct, when viewed as a whole, to be consistent with the principles of: selflessness; integrity; objectivity; accountability; openness; honesty and leadership. (The model code attached to this report at Appendix 1 sets out at annex 1 these seven principles together with a commentary on each).
- A requirement to have in place arrangements under which allegations that a member has breached the Code can be investigated and also under which decisions relating to those allegations can be made.
- A requirement for the authority to appoint an 'Independent Person' whose views must be sought and taken into account by the authority before it makes its decision on an allegation that it has decided to investigate. Additionally, the views of the Independent Person may be sought by the authority and by an elected and co-opted member in other circumstances specified in the Act.
- A regime for requiring the notification to the Monitoring Officer of Disclosable Pecuniary Interests (DPIs) to enable him to establish and maintain a register of interest backed by criminal sanctions. Under the new regime it is not only the interests of the member which must be notified and registered but also those of a spouse or civil partner; a person with whom the member is living as husband or wife or as civil partners.
- In relation to interests, the authority must also secure that its code of conduct includes appropriate provisions in respect of the Registration of DPIs and interests other than pecuniary interests.
- As with the current regime, the new provisions allow for the withholding of sensitive information from the register where the member concerned and the monitoring officer consider that the disclosure of details of the interest could lead to the member being subject to violence or intimidation.
- Parish/town councils remain responsible for adopting their own code of conduct but are still required to rely upon the district council and Monitoring Officer to register notifications of interests and to otherwise investigate allegations of breach.
- The district council's Monitoring Officer is responsible for maintaining the register of parish/town council interests and for securing that the register is published on the district council's website.

#### **4. SIGNIFICANT DEPARTURES FROM THE CURRENT ARRANGEMENTS**

4.1 In accordance with the underlying policy intentions behind the legislation there are some significant differences from the current regime. These can be summarised as follows:

- The 10 general principles are replaced by 7. This has some consequences, for example, the statutory underpinning for codes of conduct dealing with 'respect' has gone
- The model codes and undertakings to comply with them have gone.
- Standards for England has been abolished together with its various functions.
- The jurisdiction of the first tier tribunal to hear appeals has gone.
- The classification of personal and prejudicial interests under the existing code has gone and is replaced by new registration and disclosure requirements. The legislation itself introduces the concept of DPIs and other interests which under the Kent Model at Appendix 1 are referred to as 'other significant interests' ('OSIs').
- The new registration requirements for DPIs are wider in that they apply to the interests of spouses etc. It should be noted that where known about the member must register these interests otherwise a criminal offence is committed. There are no exemptions other than for sensitive information. These criminal offences are automatically matters for police investigation.
- The concept of a statutory standards committee no longer features. The consequence of this is that any committee now appointed to deal with standards issues is now an ordinary local authority committee subject to all of the usual procedural rules including a requirement for it to be politically balanced. This means that its processes will be more open to public scrutiny because of the application of Schedule 12A of the Local Government Act 1972. A further consequence is that the role of independent members and parish appointed members no longer exist in their current form.
- It follows from the abolition of the statutory standards committee that the statutory processes of initial assessment of complaints, review, consideration and hearing have all now gone. It is now solely for the authority to determine how allegations are to be received and processed.
- The powers of the council to impose specific sanctions for breach of the code have been removed. Particularly, no facility exists to disqualify or

suspend a member for a breach of the code exists. In effect, the powers of a standards committee dealing with a complaint will be limited to censure and making recommendations to the authority (or political leaders where the political balance rules apply) that a member be removed from a particular office or committee.

## **5. IMPLEMENTATION**

The law requires the authority to adopt a new code of conduct for members in furtherance of its duty to promote and maintain high standards of conduct by members and co-opted members of the authority. This code should have been effective from 1 July 2012. As members will appreciate because of the timing of the council's meetings and the necessity to draw up a code this date will not be met. This council is not alone in this however.

It was hoped that a single national 'model' code would be produced and commended to councils for adoption. This has not happened and the situation has become complicated because there are now at least three model codes in circulation. These comprise a model produced by the Local Government Association, what is described as an illustrative text produced by the Department for Communities and Local Government (sometimes referred to as the Bob Neill model) and a template model code for parish councils produced by the National Association of Local councils (NALC).

In the absence of a single national model code the Association of Kent Secretaries (the Kent local authority legal officers and monitoring officers) has always seen merit in a model code of conduct for Kent authorities of all tiers. Many councillors are members of councils operating at different tiers and this, together with the increased incidence of shared working led to the association to consider that it would simplify matters for all if members of authorities of all tiers were operating in accordance with a common code of conduct. In order to achieve this the association formed a working group which has produced a model code of conduct for all Kent authorities. This is attached at Appendix 1 and is recommended to the council for adoption.

It is appreciated that earlier this year the 1 July was indicated by DCLG as the commencement date for the new code and arrangements. However, the extreme lateness of the regulations dealing with interests, transitional arrangements and commencement led to the belief that implementation was to be delayed. It was therefore with some surprise when it was discovered that the necessary regulations were tabled in parliament on 8 June to bring the significant provisions into force on 1 July. The drafts of the regulations were not generally available so to inform the earlier preparation of codes of conduct and arrangements. Without the detail of the regulations it was impossible for authorities to frame their codes.

Although timescales have been constrained, there have been a number of somewhat intensive meetings of the Association of Kent Secretaries, where

through effective collaboration progress and ultimately consensus and agreement has been achieved on all of the significant matters relating to the code and arrangements for members' consideration.

The authority must also have in place "Arrangements" which set out:

- How it will deal with allegations;
- How it will decide whether an allegation requires investigation;
- How it decides whether there has been a failure to comply with the relevant code (i.e. a local hearing);
- What actions it might take as a result of the failure to comply with the local code.

This covers allegations against parish council members.

The intention is to gain experience and within a year for the association to review the operation of the Kent Code and arrangements and, if necessary, make recommendations for change. However, it is recognised that experience may demonstrate that more urgent review of the provisions of the code or the arrangements may be necessary on a local basis in which case the Monitoring Officer will report to the council or the Audit and Standards Committee as appropriate.

## **6. THE CODE**

The Kent Code is attached at Appendix 1. It only applies to conduct when acting as a member. There is no possibility of application of the code to a member's private life. In terms of statutory requirements, the code has to comply with the 7 principles mentioned above and must secure the provision the authority considers appropriate in respect of the registration in its register and disclosure of (a) Pecuniary Interests and (b) interests other than pecuniary interests.

The approach taken by the Kent Model Code is only to require the registration of DPI's as prescribed under the Localism Act 2011. However, it was recognised that in view of the categories of persons by reference to which DPIs arise this would not address the issue of disclosure to meetings of interests relating to those of wider family and friends. By way of example only, if the code did not expand on the disclosure requirements there would be nothing to require a member to disclose to a meeting and withdraw from the consideration of his brother in law's planning application or interest in a contract.

In the preparation of the Kent Model it was felt that both members and the wider public would consider it necessary, in the interests of good governance, to address such issues. The overall effect of this is to require members to

disclose to meetings the nature of interests and to withdraw in much the same circumstances as maintained in the case of personal and prejudicial interests under the current regime. Personal interests have disappeared. Therefore, if a member needs to declare an interest in accordance with the requirements of the new code they will, in nearly all circumstances be required to leave the meeting. For legal reasons this needs to be reinforced by a standing order or council procedure rule requiring a member to declare and withdraw. This will be the subject of a separate report from the constitutional advisory committee.

In many respects the categorisation of the DPIs follows the existing regime for registerable interests for members although it is now extended to their spouses, civil partners etc. However, one important change is that whereas under the current arrangements a member would not have a personal and prejudicial interest in an item relating to local authority housing if he were to be a council tenant, this is no longer the case. The tenancy would be a registerable DPI and in the absence of a dispensation, would require the member to declare the interest and withdraw from the consideration of the item.

Provisions in the Code will require all members to notify the Monitoring Officer of all DPIs within 28 days of the Code coming into effect. These provisions have been included because, under the Localism Act itself, members would not be required to register DPIs until re-elected unless a matter came before a meeting which concerned a DPI. In such a case, the member would be required to declare the interest at the meeting and notify the monitoring officer within 28 days so as to enable registration of the specific DPI. The Association of Kent Secretaries carefully considered this matter and took the view that this would be unworkable and confusing both to members and to the wider public.

Members are reminded that there are criminal sanctions for failure to declare and notify DPIs. Additionally, members' attention is drawn to the attached arrangements at Appendix 2 which consider the relationship between an allegation of a criminal matter and a breach of the Code and how this would be dealt with in practice.

The general obligations in the Model Code will be familiar to members as they are not dissimilar from under the existing Code. The notable exception is the non-inclusion of a provision relating to respect. This is because the statutory underpinning for this is regarded as weak but, perhaps more significantly, because experience has shown that this provision has generated some of the more trivial and time consuming complaints under the current code. The Association of Kent Secretaries believes that the retention of the bullying provision and the disrepute provision adequately addresses the cases which should properly be investigated.

## 7. THE ARRANGEMENTS

The model arrangements are set out in Appendix 2. An earlier draft of the arrangements was considered by the Standards Committee on 24 April 2012. The present draft is based on the one considered by the standards committee but has been simplified. In addition the appendices – the procedure on the hearing of a complaint and the hearing sub-committee procedure has now been produced. Whilst the Standards Committee were content generally with the arrangements they did have concerns about the parish/town council representatives on the hearing sub-committee. This is dealt with below.

In addition the first draft of the arrangements was circulated to all parish / town councils in the district (though without the appendices). Hythe Town Council made some detailed comments and considered that the original arrangements were “pro-complainant and anti-member.”

The draft produced by the Association of Kent Secretaries aims to set out a process that is fair and easily understood. The assessment criteria, for example, under which complaints are judged are set out in the procedure on receipt of a complaint.

The proposed Kent Model Arrangements place on the Monitoring Officer responsibility for deciding which allegations should be investigated and which should not (the process currently known as ‘Initial Assessment’). Members will recall that under the existing regime this was a function that the law placed on the Standards Committee (and its sub-committees). This aspect of the Kent Model Arrangements was the subject of extensive discussion by the Association of Kent Secretaries. The balance of opinion was that the existing arrangements for initial assessment are bureaucratic, unwieldy and unnecessarily resource intensive. Also, they do not admit of the possibility of trivial or ill-founded allegations being dismissed at a very early stage.

The proposed Kent Model Arrangements do have the benefit of simplicity of operation in their treatment of this aspect of the receipt of allegations but places responsibilities on the Monitoring Officer as an individual. In recognition of this, the Model Arrangements attempt to lay down comprehensive criteria by reference to which the Monitoring Officer will be required to exercise his judgement. The draft delegations to the Monitoring Officer (Appendix 3) reflect in paragraph 2 the functions of the Monitoring Officer in the delegations.

It has not been possible to circulate the new drafts for comment but the intention is to review the entire regime certainly within a year. Consultation on any amendments can be carried out then.

## 8. AUDIT AND STANDARDS COMMITTEE

The Localism Act 2011 contains no requirement for the establishment of a Standards Committee. Notwithstanding this, members will note that the Kent Model Arrangements do call for the establishment of such a committee as, without it, it is difficult to see how the results of investigations into allegations could be considered in a way which would be seen to be fair and transparent.

At its meeting on 9 May 2012 the council resolved to establish the Audit and Standards Committee to fulfil the functions envisaged by the arrangements (including the appointment of hearing sub-committees). The terms of the resolution are:

*“RESOLVED:*

- 1. To receive and note report A/12/05.*
- 2. To approve the terms of reference of the Audit and Standards Committee and the Standards Sub-committee set out in Appendix 1.*
- 3. That the Audit and Standards Committee and Standards Subcommittee be composed respectively of five and three members of the district council with the addition of a parish/town council representative on the latter when it is hearing a complaint about a breach of the code of conduct by a parish/town councillor.*
- 4. That the Shepway Area Committee of the Kent Association of Local Councils be invited to put forward three nominees to sit on the subcommittee and that they be formally appointed by the Audit and Standards Committee.”*

The Localism Act requires the code of conduct to be adopted by the full council. It is also a requirement that the Independent person (see further below) is appointed by the full council. These two functions excepted, it is proposed that the audit and standards committee will discharge all functions associated with the new standards regime which have not been delegated to the monitoring officer (or ascribed to him by statute).

The Association of Kent Secretaries has also produced a standard terms of reference for a standards committee and it is suggested that these be adopted with the addition of the audit matters. The draft terms of reference are set out in Appendix 4. It should be noted that it gives specific delegations to grant dispensations (see below).

The parish/town representatives on the standards committee expressed concern about the proposed parish/town council representation on the hearing sub-committee in particular that the co-optees would not be eligible to vote.

This matter has been the subject of further consideration. However the law clearly states that unless the sub-committee is purely advisory and also that

sub-committee is a sub-committee of an advisory committee, co-optees cannot vote. It is not possible therefore for the council to confer voting status on them. It may be possible to explore delegation arrangements to parish/ Town councils but this would have to be a matter for future consideration. Consequently it is considered that the resolution of the council on 9 May 2012 was correct and that the invitation to the Shepway Area Committee of the Kent Association of Local Council should stand.

## **9. THE INDEPENDENT PERSON**

The scheme of the Localism Act 2012 aims to secure independent input into the standards regime through the requirement placed upon the authority to appoint an 'Independent Person'. The requirements of the Act in this connection are quite specific. The Act provides that the arrangements put in place for the investigation of allegations and making decisions on them must include provision for the appointment of at least one Independent Person. The role of the Independent Person is prescribed by section 28(7) of the Act. This provides:

- “(7) Arrangements put in place .....by a relevant authority must include provision for the appointment by the authority of at least one independent person –
- (a) whose views are to be sought, and taken into account, by the authority before it makes its decision on an allegation that it has decided to investigate, and
  - (b) whose view may be sought -
    - (i) by the authority in relation to an allegation in circumstances not within paragraph (a)
    - (ii) by a member, or co-opted member of the authority if that person's behaviour is the subject of an allegation, and
    - (iii) by a member, or co-opted member, of a parish council if that person's behaviour is the subject of an allegation and the authority is the parish council's principal authority.

Thus, the Independent Person's functions are all related to 'allegations' and the Independent Person does not have a general advisory role in advising upon or monitoring the operation of the standards regime. This is fundamentally different from the role previously fulfilled by the independent representatives on the Standards Committee.

The Localism Act 2012 contains detailed provisions as to who may and may not be regarded as an Independent Person. It also prescribes that an appointment as an Independent Person can only be made after public advertisement of a vacancy, and receipt of an application by a candidate.



The proposed job description and person specification for the Independent Person is appended as Appendix 5 for approval.

The appointment must be approved by the majority of members of the authority. The recommendations of the Audit and Standards Committee for the appointment of an individual as an Independent Person will be placed before the council meeting in September. It should be noted that, as enacted, the Localism Act prohibited the appointment of an existing independent member of a Standards Committee as an Independent Person. However, the transitional arrangements (which are extremely limited) have at least now relaxed this to allow the appointment of an independent member provided that the appointment is made before 1 July 2013.

The Act gives discretion to appoint one or more Independent Persons, but provides that each Independent Person must be consulted before any decision is taken on a complaint which has been investigated. Accordingly, there would appear to be little advantage in appointing more than one Independent Person, provided that a reserve candidate is retained and can be activated at short notice, without the need for re-advertisement, in the event that the Independent Person is no longer able to discharge the function.

As far as remuneration is concerned it is suggested that this be delegated to the deputy chief executive in consultation with the chairman of the Audit and Standards Committee.

## **10. DISPENSATIONS**

The Localism Act 2011 enables the council to grant dispensations to members to participate and/or vote on matters in which they have a discloseable pecuniary interest.

The proposed Kent code extends the power to grant dispensations to OSIs on the same grounds.

The statutory provisions are found in section 33 of the Localism Act. A written request is needed in all cases. A dispensation can be granted to:

- speak and vote or
- speak only or
- vote only

The grounds on which the council can grant a dispensation having regard to all the relevant circumstances are that it:

- (a) considers that without the dispensation the number of persons prohibited from participating in any particular business would be so great a proportion of the body transacting the business as to impede the transaction of the business,

- (b) considers that without the dispensation the representation of different political groups on the body transacting any particular business would be so upset as to alter the likely outcome of any vote relating to the business,
- (c) considers that granting the dispensation is in the interests of persons living in the authority's area,
- (d) considers that without the dispensation each member of the authority's executive would be prohibited by the interest from participating in any particular business to be transacted by the authority's executive, or
- (e) considers that it is otherwise appropriate to grant a dispensation.

A dispensation must specify the period for which it has effect, though the period cannot exceed four years.

It will be appreciated that the reasons for granting dispensations vary, some are mainly objective others subjective. It is suggested that the varying nature of the dispensations means that they can be approved differently.

The mainly objective grounds are where the council:

- considers that without the dispensation the number of persons prohibited from participating in any particular business would be so great a proportion of the body transacting the business as to impede the transaction of the business,
- considers that without the dispensation each member of the authority's executive would be prohibited by from participating in any particular business to be transacted by the authority's executive.

As these are in the main objective it is suggested that the monitoring officer be granted delegated authority to grant dispensations. These proposals are shown in the proposed delegations.

## **11. OPTIONS**

To accept the recommendations and in particular to adopt the Kent Model Code and associated arrangements.

To reject the Kent Model ~Code and the arrangements.

To amend the Kent Model Code and arrangements.

To adopt a code and arrangements which are completely difference from the Kent Model but which meet the statutory requirements.

## 12. EVALUATION OF OPTIONS

For the reasons set out in this report the adoption of the Kent Model Code and arrangements is the recommended option. Members will appreciate that there is very little time left for the necessary consideration of alternatives to the Code and Arrangements presented for adoption. Members can be reassured of the provisions available to amend these documents and that the Association of Kent Secretaries as a group are committed to sharing experience and to keeping documents under review

A Code and Arrangements must be adopted from 1 July 2012. The permutations of possible amendments within the statutory framework are potentially wide and varied. Practically speaking, there is insufficient time for the council to prepare, evaluate and consider alternatives to the Kent model and arrangements. However, officers have carefully considered the alternative models available and strongly commend the Kent Model and Arrangements to the council.

## 13. RISK MANAGEMENT ISSUES

13.1 A summary of the perceived risks follows:

Perceived risk	Seriousness	Likelihood	Preventative action
Failure to adopt a new standards regime	Medium	Low	Consider and approve with or without amendment the recommendations in the report.

## 14. LEGAL/FINANCIAL AND OTHER CONTROLS/POLICY MATTERS

### 14.1 Legal Officer's Comments (EC)

There are no legal comments

### 14.2 Finance Officer's Comments (GW)

There is currently no budget provision for any costs arising from the appointment of an independent person. A growth item will need to be submitted to Cabinet for consideration and approval once further details over remuneration etc are confirmed.

### 14.3 Diversities and Equalities Implications

There are no specific diversities and equalities Implications arising from this report.

## 15. CONTACT OFFICER AND BACKGROUND DOCUMENTS

Councillors with any questions arising out of this report should contact the following officer prior to the meeting:

Peter Wignall, Head of Administration  
Tel: 01303 853253  
Email: peter.wignall@shepway.gov.uk

The following background documents have been relied upon in the preparation of this report:

None

### **Appendices:**

- Appendix 1: Kent Model Code of Conduct
- Appendix 2: Kent Model Arrangements
- Appendix 3: Delegation of Functions to the Monitoring Officer
- Appendix 4: Terms of Reference/Delegations to the audit and standards committee
- Appendix 5: Job description and person specification of Independent Person

## The District Council of Shepway

# Kent Code of Conduct for Members

### Preamble

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

## THE CODE

### 1. Interpretation

In this Code:

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

- (a) housing - where you are a tenant of the Authority provided that those functions do not relate particularly to your tenancy or lease; or
- (b) a family member or any other person with whom you have a close association, including your spouse, civil partner, or somebody with whom you are living as a husband or wife, or as if you are civil partners; or
- (c) any person or body who employs or has appointed such persons, any firm in which they are a partner, or any company of which they are directors; or
- (d) any person or body in whom such persons have a beneficial interest in a class of securities exceeding the nominal value of £25,000; or
- (e) any body of which you are in a position of general control or management and to which you are appointed or nominated by the Authority; or
- (f) any body in respect of which you are in a position of general control or management:
  - (i) exercising functions of a public nature; or
  - (ii) directed to charitable purposes; or
  - (iii) one of whose principal purposes includes the influence of public opinion or policy (including any political party or trade union).

**“Authority”** means the District Council of Shepway

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

- (a) school meals or school transport and travelling expenses - where you are a parent or guardian of a child in full time education, or are a parent governor of a school, unless it relates particularly to the school which your child attends;
- (b) statutory sick pay under Part XI of the Social Security Contributions and Benefits Act 1992 - where you are in receipt of, or are entitled to the receipt of, such pay;
- (c) an allowance, payment or indemnity given to members of the Authority;
- (d) any ceremonial honour given to members of the Authority;
- (e) setting council tax or a precept under the Local Government Finance Act 1992.

**“Code”** means this Code of Conduct.

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

- (a) any committee or sub-committee of the Authority, or

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

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

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

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

**“Meeting”** means any meeting of:

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

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

**“Other Significant Interest”** means an interest (other than a Disclosable Pecuniary Interest or an interest in an Authority Function) in any business of the authority which:

- (a) affects the financial position of yourself and/or an Associated Person to a greater extent than the majority of:-
  - (i) other council tax payers, ratepayers or inhabitants of the electoral division or ward, as the case may be, affected by the decision; or
  - (ii) (in other cases) other council tax payers, ratepayers or inhabitants of the Authority's area; or
- (b) relates to the determination of your application for any approval, consent, licence, permission or registration made by, or on your behalf of, you and/or an Associated Person;

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

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

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

## **Scope**

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

### **General obligations**

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

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

- (2) You must not:

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

### **Registering Disclosable Pecuniary Interests**

4. (1) You must, before the end of 28 days beginning with the day you become a Member or Co-opted Member of the Authority, or before the end of 28 days beginning with the day on which this Code takes effect (whichever is the later), notify the Monitoring Officer of any Disclosable Pecuniary Interest.



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

### **Declaring Interests**

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

## **Sensitive Interests**

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

## **Gifts and Hospitality**

7. (1) You must, before the end of 28 days beginning with the day of receipt/acceptance, notify the Monitoring Officer of any gift, benefit or hospitality with an estimated value of £100 or more, or a series of gifts, benefits and hospitality from the same or an associated source, with an estimated cumulative value of £100 or more, which are received and accepted by you (in any one calendar year) in the conduct of the business of the Authority, the business of the office to which you have been elected or appointed or when you are acting as representative of the Authority. You must also register the source of the gift, benefit or hospitality.
- (2) Where any gift, benefit or hospitality you have received or accepted relates to any matter to be considered, or being considered at a Meeting, you must disclose at the commencement of the Meeting or when the interest becomes apparent, the existence and nature of the gift, benefit or hospitality, the person or body who gave it to you and how the business under consideration relates to that person or body. You may participate in the discussion of the matter and in any vote taken on the matter, unless you have an Other Significant Interest, in which case the procedure in paragraph 5 above will apply.
- (3) You must continue to disclose the existence and nature of the gift, benefit or hospitality at a relevant Meeting, for 3 years from the date you first registered the gift, benefit or hospitality.
- (4) The duty to notify the Monitoring Officer does not apply where the gift, benefit or hospitality comes within any description approved by the Authority for this purpose.

## **Dispensations**

- 8.(1) The [Standards] Committee, or any sub-committee of the [Standards] Committee, or the Monitoring Officer (where authorised) may, on a written request made to the Monitoring Officer (as appointed Proper Officer for the receipt of applications for dispensation) by a Member with an Interest, grant a dispensation relieving the Member from either or both of the restrictions on participating in discussions and in voting (referred to in paragraph 5 above).
- (2) A dispensation may be granted only if, after having had regard to all relevant circumstances, the [Standards] Committee, its sub-committee, or the Monitoring Officer (where authorised) considers that:

- (a) without the dispensation the number of persons prohibited from participating in any particular business would be so great a proportion of the body transacting the business as to impede the transaction of the business; or
  - (b) without the dispensation, the representation of different political groups on the body transacting any particular business would be so upset as to alter the likely outcome of any vote relating to the business; or
  - (c) granting the dispensation is in the interests of persons living in the Authority's area; or
  - (d) without the dispensation each member of the Authority's executive would be prohibited from participating in any particular business to be transacted by the Authority's executive; or
  - (e) it is otherwise appropriate to grant a dispensation.
- (3) A dispensation must specify the period for which it has effect, and the period specified may not exceed four years.
- (4) Paragraph 5 above does not apply in relation to anything done for the purpose of deciding whether to grant a dispensation under this paragraph 8.

## THE SEVEN PRINCIPLES OF PUBLIC LIFE

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**“M”** means the person M referred to in section 30 of the Act

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

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

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

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

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

<b>Interest</b>	<b>Description</b>
Employment, office, trade, profession or vacation	Any employment, office, trade, profession or vocation carried on for profit or gain.
Sponsorship	Any payment or provision of any other financial benefit (other than from the relevant authority) made or provided within the relevant period in respect of any expenses incurred by M in carrying out duties as a member, or towards the election expenses of M.  This includes any payment or financial benefit from a trade union within the meaning of the Trade Union and Labour Relations (Consolidation) Act 1992.
Contracts	Any contract which is made between the relevant person (or a body in which the relevant person has a beneficial interest) and the

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

## APPENDIX 2

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

#### 1. Context

- 1.1 These Arrangements are made under section 28 of the Localism Act 2011. They set out the process that the 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 Shepway.
- 2.2 'Code of Conduct' means the Code of Conduct, which the District [and Parish 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 Code of Conduct.
- 2.5 'Hearing sub - committee' means the sub - committee appointed by the District 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] [City] [County] [District] Council under section 28(7) of the Localism Act 2011:
- (a) whose views must be sought and taken into account by the District Council before a decision is made on any complaint alleging a breach of the Code of Conduct by a Subject Member;
  - (b) who may be consulted by the Subject Member about the complaint.
- 2.7 'Investigating Officer' means the person appointed by the Monitoring Officer to undertake a formal investigation of a complaint alleging a breach of the Code of Conduct by a Subject Member. The Investigating Officer may be another senior officer of the District Council, an officer of another authority or an external investigator.
- 2.8 '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.
- [2.9 'Parish Council' means the relevant parish/town council within the District of Shepway

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 District[or Parish Council] against whom a complaint has been made alleging a breach the Code of Conduct.

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

3.1 The Council shall appoint the Independent Person (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 District Council from time to time.

3.2 The Independent Person (and any substitute) 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 Annex 1 to these Arrangements. Complainants who find difficulty in making their complaint in writing (e.g. because of a disability), will be offered assistance.

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

4.3 The Monitoring Officer will normally acknowledge receipt of a complaint within 5 working days of receiving it. At the same time (and subject to para. 3.2 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.

### **5. Criminal conduct**

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

(a) fail to notify the Monitoring Officer of a Disclosable Pecuniary Interest within 28 days beginning with the day you become, or are re-elected or re-appointed, a Member or Co-opted Member of the Authority;

(b) fail to notify the Monitoring Officer of a Disclosable Pecuniary Interest within 28 days beginning with the day you become aware of it, where you are acting alone in the course of discharging a function of the Authority (including making a decision in relation to the matter) and the interest is not already registered or is not the subject of a pending notification to the Monitoring Officer;

(c) fail to disclose a Disclosable Pecuniary Interest at a meeting, where such interest has not already been registered or notified to the Monitoring Officer;

(d) fail to notify the Monitoring Officer of a Disclosable Pecuniary Interest within 28 days beginning with the day you disclose it at a meeting, where such interest has not already been registered or notified to the Monitoring Officer;



- (e) take part in discussions or votes at meetings that relate to the Disclosable Pecuniary Interest, unless a dispensation has been granted;
  - (f) knowingly or recklessly provide false or misleading information in any of the above disclosures or notifications.
- 5.2 Where a complaint against a Subject Member relates to conduct of a criminal nature referred to above, the Monitoring Officer will deal with the complaint in accordance with paragraph 4(4) of Annex 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 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**
- 6.1 The Independent Person must be consulted and have their views taken into account before the Authority makes a finding as to whether a Member has failed to comply with the Code or decides on action to be taken in respect of that Member. At any other stage of the complaints process under these Arrangements, the Independent Person may be consulted by the Monitoring Officer and/or the Subject Member.
- 8. Preliminary tests**
- 8.1 The Monitoring Officer will, in consultation with the Independent Person, 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**
- 9.1 The Monitoring Officer, in consultation with the Independent Person, may consider that the complaint can be resolved informally at any stage in accordance with paragraph 6 of Annex 1 to these Arrangements.
- 10. Investigation**
- 10.1 If the Monitoring Officer, in consultation with the Independent Person, decides that the complaint merits formal investigation, they will, within 10 working days of receiving it, appoint an Investigating Officer to undertake the investigation, and inform the Parties of the appointment.
- 10.2 The Investigating Officer will investigate the complaint in accordance with Annex 2 to these Arrangements.
- 11. Hearing**
- 11.1 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 sub - committee to determine the outcome of the complaint in accordance with Annex 3 to these Arrangements.

**12. Sanctions**

- 12.1 Where a Subject Member has been found by the hearing sub - committee to have breached the Code of Conduct, the hearing sub - committee may apply any one or more sanctions in accordance with paragraph 3 of Annex 4 to these Arrangements.

**13. Appeal**

- 13.1 There is no right of appeal for the Complainant or the Subject Member against decisions of either the Monitoring Officer or the hearing sub - committee.

**14. Revision of these Arrangements**

- 14.1 The District Council may by resolution agree to amend these Arrangements and has delegated to the Monitoring Officer and the hearing sub – 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.

## ANNEX 1

# PROCEDURE ON RECEIPT OF A COMPLAINT

## 1. Preliminary tests

1.1 The complaint will be assessed by the Monitoring Officer in consultation with the Independent Person against the legal jurisdiction test in paragraph 1.2 and, if applicable, the local assessment criteria test in paragraph 1.4 below.

### 1.2 Legal jurisdiction criteria test:

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

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

### 1.4 Local assessment criteria test:

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

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

- (k) The complaint is about a deceased person;
  - (l) The complaint is about a person who is no longer a 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 within 10 working days of receipt of the complaint by the Monitoring Officer. There is no right of appeal against the Monitoring Officer's decision.
- 2. Notification of complaint to Subject Member**
- 2.1 Subject to any representations from the Complainant on confidentiality (see paragraph 5 below), the Monitoring Officer will notify the Subject Member [and, if applicable, the Parish Clerk].
- 2.2 The Monitoring Officer may invite the Subject Member [and, if applicable, the Parish Clerk] to submit initial views on the complaint within 10 working days, which will be taken into account by the Monitoring Officer when they decide how to deal with the complaint (see paragraph 4 below). Views received from the Subject Member [and/or Parish Clerk] after the 10 working day time limit may be taken into account at the discretion of the Monitoring Officer, providing the views are received before the Monitoring Officer issues their written decision on how the complaint will be dealt with.
- 3. Asking for additional information**
- 3.1 The Monitoring Officer may ask the Complainant and the Subject Member [and, if applicable, the Parish Clerk] for additional information before deciding how to deal with the complaint.
- 4. What process to apply - informal resolution or investigation and/or no action?**
- 4.1 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 standards committee (see paragraph 4 of Annex 4 to these Arrangements);
  - (b) the Subject Member's behaviour is part of a continuing pattern of less serious misconduct that is unreasonably disrupting the business of the 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 will appoint an Investigating Officer who will conduct the investigation in accordance with the procedure at Annex 3 to these Arrangements.
- 4.4 If the complaint identifies criminal conduct or breach of other regulations by the Subject Member or any other person, the Complainant will be advised by the Monitoring Officer to report the complaint to the police or other prosecuting or regulatory authority. In such cases, the complaints process under these Arrangements will be suspended, pending a decision/action by the police or other prosecuting or regulatory authority. Where the police or other prosecuting or regulatory authority decide to take no action on the

complaint, the Monitoring Officer will lift the suspension and in consultation with the Independent Person will apply the local assessment criteria test in paragraph 1.4 above.

- 4.5 The Monitoring Officer in consultation with the Independent Person, will take no action on the complaint when one or more of the following apply:
- (a) on-going criminal proceedings or a police investigation into the Subject Member's conduct or where the complaint is suspended in accordance with paragraph 4.4 above;
  - (b) investigation cannot be proceeded with, without investigating similar alleged conduct or needing to come to conclusions of fact about events which are also the subject of some other investigation or court proceedings;
  - (c) the investigation might prejudice another investigation or court proceedings;
  - (d) on-going investigation by another prosecuting or regulatory authority;
  - (e) genuine long term (3 months or more) unavailability of a key party;
  - (f) serious illness of a key party.
- 4.6 Within 20 working days of receipt of the complaint, the Monitoring Officer will notify the Complainant, Subject Member [and, if applicable, the Parish Clerk] of their decision and reasons for applying one of the following processes in the format of the Decision Notice template 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 [Hearing Panel]; or
  - (e) to take no action and close the matter; or
  - (f) to refer the complaint to the relevant political group leader for action.
- 4.7 The decision notice will be published on the District Council's website. There is no right of appeal against the Monitoring Officer's decision. However, in the event that the Complainant submits additional relevant information, the Monitoring Officer will consider and decide if the matter warrants further consideration under these Arrangements, in which case it shall be treated as a fresh complaint.

## **5. Confidentiality**

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

## **6. Informal resolution**

6.1 The Monitoring Officer may, in consultation with the Independent Person, seek to resolve the complaint informally, without the need for an investigation or a hearing (following an investigation). The Monitoring Officer will consult with the Complainant and the Subject Member to agree what they consider to be a fair resolution which will help to ensure higher standards of conduct for the future.

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

- (a) The Subject Member appears to have a poor understanding of the Code of Conduct and/or related 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 censure; 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 in consultation with the Independent Person.

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

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

**EXAMPLE TEMPLATE – COMPLAINT FORM**

# Complaint Form

**Your Details**

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

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

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

- Member of the public
- An elected or co-opted member of an authority
- An independent member of the Standards Committee
- Member of Parliament
- Local authority Monitoring Officer
- Other council officer or authority employee
- Other (please give details) \_\_\_\_\_

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

Title	First name	Last name	Council or authority name

4. Please explain in this section what the councillor has done that you believe breaches the Code of Conduct. If you are complaining about more 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 he (acting in consultation with the Independent Person) 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 himself in a manner which could reasonably be regarded as bringing his office or the Authority into disrepute you, you should state what it was they said or did.
- You should provide the dates of the alleged incidents wherever possible. If you cannot provide exact dates it is important to give a general timeframe.
- You should confirm whether there are any witnesses to the alleged conduct and provide their names and contact details if possible.
- You should provide any relevant background information.

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

5. **Only complete this next section if you are requesting that your identity is kept confidential. Please see the notes in the accompanying leaflet "How to make a complaint".**

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

Signed: \_\_\_\_\_

Date: \_\_\_\_\_

Return Address:     The Monitoring Officer  
                          Shepway District Council  
                          Civic Centre  
                          Castle Hill Ave.  
                          Folkestone  
                          Kent CT20 2QY



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

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

### **Complaint No:**

### **Complaint**

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

### **Complaint summary**

[Summarise complaint in numbered paragraphs]

### **Consultation with Independent Person**

[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 to decide if the Code of Conduct has been breached. They are only considering if there is enough information which shows a potential breach of the Code of Conduct that warrants referral for investigation.

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

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

[detail relevant Code of Conduct paragraphs]

### **Notification of decision**

This decision notice is sent to the:

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

### **What happens now**

The complaint will now be investigated under the District 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 District 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.

**Signed:**

**Date**

**Print name:**

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

### **2. The draft report**

- 2.1 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) to the Monitoring Officer for review.

2.2 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 'confidential' and will detail:

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

2.3 Once the Investigating Officer has determined that the responses received from the Subject Member and/or the Complainant add nothing of substance to the investigation, they will finalise the draft report and make their final conclusions and recommendations to the Monitoring Officer. The report will be clearly labelled FINAL.

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

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

3.2 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.

3.3 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 Hearing sub - committee in accordance with the relevant procedure detailed in this Annex 2.

## ANNEX 3

### HEARING SUB – COMMITTEE PROCEDURE

#### 1. Rules of procedure

- 1.1 The hearing sub - committee consists of three voting elected Members drawn from the audit and standards committee, one of whom shall be elected as Chairman. *Where the Subject Member is a Parish Councillor, a representative of one of the Parish Council's within the District may be present in an advisory capacity with no voting rights during the hearing.*
- 1.2 The quorum for a meeting of the hearing sub - committee is two elected Members.
- 1.3 The Independent Person's views must be sought and taken into consideration before the hearing sub - 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 hearing sub - committee in private) but in the event that this is not possible, may submit their views on the complaint to the hearing sub - committee in writing instead.
- 1.4 The legal requirements for publishing agendas, minutes and calling meetings, will apply to the hearing sub - 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 Local Government Act 1972 (as amended) will be applied where it is necessary to exclude the public and press from meetings of the hearing sub - committee where it is likely that confidential or exempt information will be disclosed.
- 1.5 Once a hearing has started, the District Council's rules of substitution do not apply to the hearing sub - committee proceedings.
- 1.6 All matters/issues before the hearing sub - committee will be decided by a simple majority of votes cast, with the Chairman having a second or casting vote.
- 1.7 Where the Subject Member fails to attend the hearing sub - committee and where the hearing sub - committee is not satisfied with their explanation for their absence from the hearing, the hearing sub - 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 hearing sub - 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.<sup>1</sup>

#### 2. Right to be accompanied by a representative

The Subject Member may choose to be accompanied and/or represented at the hearing sub - committee by a fellow councillor, friend or colleague.

#### 3. The conduct of the hearing

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



- (a)elect a Chairman;
  - (b)apologies for absence;
  - (c)declarations of interests;
  - (d)in the absence of the Subject Member, consideration as to whether to adjourn or to proceed with the hearing (refer to paragraph 1.11 above);
  - (e)introduction by the Chairman, of members of the hearing sub - 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 Chairman may exercise their discretion and amend the order of business, where they consider that it is expedient to do so in order to secure the effective and fair consideration of any matter.
- 3.3 The hearing sub - 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 [Hearing Panel] may question the Investigating Officer upon the content of his/her report and any witnesses called by the Investigating Officer.
- 3.5 **Presentation of the Subject Member's case**
- (a)The Subject Member or their representative presents their case and calls their witnesses;
  - (b)The Investigating Officer may question the Subject Member and any witnesses called by the Subject Member;
  - (c)The hearing sub - 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 Chairman will invite the Independent Person to express their view on whether they consider that on the facts presented to the hearing sub - committee there has been a breach of the Code of Conduct or no breach as the case may be.

### **3.8 Deliberations of the hearing sub - committee**

- (a) The hearing sub - 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.
- (b) Prior to reaching a decision, the hearing sub - 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.
- (c) Where the complaint has a number of aspects, the hearing sub - committee may reach a finding, apply a sanction and/or make a recommendation on each aspect separately.
- (d) The hearing sub - committee will make its decision on the balance of probability, based on the evidence before it during the hearing.
- (e) The hearing sub - committee 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.
- (f) If evidence presented to the hearing sub - committee highlights other potential breaches of the District or Parish Council's Code of Conduct, then the Chairman will outline the hearing sub – committee's concerns and recommend that the matter be referred to the Monitoring Officer as a new complaint.

3.9 (a) Having deliberated on its decision and/or recommendations and the application of any sanctions, the hearing sub - committee will reconvene the hearing in public and the Chairman will announce that on the facts presented, the Panel considers that there has been a breach of the Code of Conduct, or no breach, as the case may be. The Chairman will announce the sanctions the Panel is minded to apply and/or any recommendations to the District or Parish Council and/or Monitoring Officer.

(b) The Chairman 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.

(c) Having heard the representations/views, the hearing sub - committee will adjourn and deliberate in private.

3.10 (a) 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 hearing sub - committee will reconvene the hearing in public and the Chairman will announce:

- (i) the sub - committee's decision as to whether or not the Subject Member has failed to comply with the Code of Conduct, and the principal reasons for the decision;
- (ii) the sanctions (if any) to be applied;
- (iii) the recommendations (if any) to be made to the District or Parish Council or Monitoring Officer;
- (iv) that there is no right of appeal against the sub - committee's decision and/or recommendations.

#### **4. Range of possible sanctions**

4.1 Subject to paragraph 4.4 below, where the hearing sub - 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;
- (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;
- (h) Reporting the Panel's findings to 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 Panel considers appropriate.

- 4.2 The hearing sub – committee has no power to suspend or disqualify the Subject Member or to withdraw basic or special responsibility allowances.
- 4.3 The hearing sub – committee may specify that any sanction take effect immediately or take effect at a later date and that the sanction be time limited.
- 4.4 When deciding whether to apply one or more sanctions referred to in paragraph 4.1 above, the hearing sub – committee will ensure that the application of any sanction is reasonable and proportionate to the Subject Member’s behaviour. The hearing sub – 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?

**5. Publication and notification of the hearing sub - committee decision and recommendations**

- 5.1 Within 10 working days of the hearing sub – committee’s announcement of its decision and recommendations, the Monitoring Officer will publish the name of the Subject Member and a summary of the hearing sub – 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 hearing sub – 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 The Monitoring Officer will report the hearing sub – committee's decision and recommendations to the next ordinary meeting of the audit and standards Committee for information.

## TEMPLATE - DECISION NOTICE (of Hearing Sub - Committee)

### Complaint No: xxxx

On [insert date], the hearing sub – committee of the Shepway District Council considered a report of an investigation into the alleged conduct of Councillor [insert name of councillor], a member of [insert authority name]. A general summary of the complaint is set out below.

### Complaint summary

[Summarise complaint in numbered paragraphs as set out in the Investigating Officer's report to the hearing sub – committee]

### 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 sub – committee reached the following decision(s):

[Summarise the finding of facts and the hearing sub – committee's decision against each finding of fact in numbered paragraphs as set out in the Investigating Officer's report to the hearing sub – committee, but substitute the Investigating Officer for the Hearing Panel. Please note that the hearing sub – committee's findings may differ from that of the Investigating Officer]

The hearing sub – committee 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 sub – committee's decision.

### Notification of decision

This decision notice is sent to the:

- Councillor [name of councillor]
- Complainant
- [Clerk to the xxxx Parish/Town Council];
- Kent County Council's Monitoring Officer *[applicable only where the Councillor is serving at both District and County level]*

### Additional help

If you need additional support in relation to this decision notice or future contact with the District 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.

**Signed:**

**Date**

**Print name:**

Chairman of the hearing sub – committee  
Civic Centre  
Castle Hill Ave  
Folkestone  
Kent CT20 2QY

### **APPENDIX 3 – DELEGATIONS TO MONITORING OFFICER**

1. Appointed as Proper Officer for the purposes of receiving applications for dispensation pursuant to section 33(1) of the Localism Act 2011.
2. To grant dispensations to Members pursuant to section 33(2) of the Localism Act 2011 and paragraph 8 of the adopted code of conduct to speak only or to speak and vote where:
  - (i) so many members of the decision-making body have disclosable pecuniary interests in a matter that it would impede the transaction of the business; or
  - (ii) without a dispensation, no member of the executive would be able to participate on a particular item of business.
2. Appointed to receive complaints relating to alleged breaches of the adopted Code of Conduct and to process complaints in accordance with the adopted Arrangements for dealing with Code of Conduct Complaints.



## **APPENDIX 4 – TERMS OF REFERENCE AND DELEGATION TO THE AUDIT AND STANDARDS COMMITTEE**

### **AUDIT AND STANDARDS COMMITTEE**

#### **Terms of reference**

##### **Audit**

- Review and approve the financial statements, external auditor's opinion and reports to members and monitor management action in response to the issues raised by external audit.
- To consider the head of internal audit's annual report and opinion on the Council's corporate governance arrangements.
- To conduct reviews of the effectiveness of the Council's system of internal audit.
- Be satisfied that the authority's assurance statement including the annual governance statement properly reflect the risk environment and any actions required to improve it.
- Approve (but not direct) internal audit's strategy, plan and monitor performance.
- Review summary internal audit reports and the main issues arising and seek assurance that action has been taken where necessary.
- Consider the effectiveness of the authority's risk management arrangements, the control environment and associated anti fraud and anti corruption arrangements and seek assurance that action is being taken to mitigate those risks identified.
- To make recommendations on Contract Standing Orders.
- To maintain an overview of the Council's whistleblowing policy

##### **Standards**

To discharge the functions as set out in Part 1, Chapter 7 of the Localism Act 2011 including:

1. To promote and maintain high standards of conduct by Members and Co-opted Members of the [Borough] [City] [County] [District] Council and to make recommendations to Council on improving standards.
2. To advise and assist Parish/Town Councils and Parish/Town Councillors to maintain high standards of conduct and to make recommendations to Parish/Town Councils on improving standards.
3. To advise the District Council on the adoption of or revisions to its Code of Conduct.
4. To advise, train or arrange to train [District Members, Co-opted Members and Parish/Town Councillors on matters relating to the Code of Conduct.

5. To assist the District Councillors, Co-opted Members and Parish/Town Councillors to observe their respective Codes of Conduct.
6. To monitor and assess the operation and effectiveness of the Code of Conduct and to review and manage the Arrangements for dealing with Code of Conduct Complaints.
7. To advise on local ethical governance protocols and procedures.
8. To maintain oversight of the District Council's arrangements for dealing with Code of Conduct complaints.
9. To act as an advisory body in respect of any ethical governance matter.
10. To monitor and review the procedures for the Register of Members' Interests and declaring gifts and hospitality.
11. To receive quarterly reports (or less frequently if there are no complaints to report) from the Monitoring Officer on the number and nature of complaints received and action taken as a result in consultation with the Independent Person.
12. To receive an annual report on the District Council's ethical governance arrangements.
13. To appointment a sub-committee to deal with Code of Conduct complaints, following investigation.
14. To grant dispensations pursuant to section 33(2) of the Localism Act 2011 and paragraph 8 of the adopted code of conduct where:
  - (i) without the dispensation, the representation of different political groups on the body transacting the business would be so upset as to alter the outcome of any vote on the matter.
  - (ii) that the authority considers that the dispensation is in the interests of persons living in its area; or
  - (iii) where the Committee considers that it is otherwise appropriate to grant a dispensation.

**Shepway District Council**

**Audit and Standards Committee – Independent Person**

**Job Description and Person Specification**

**Article I. Introduction**

In accordance with Section 28(7) of the Localism Act 2011 the Council is required to appoint up at least one Independent Person.

**Article II. Descriptions of Duties and Functions**

The role of the Independent Person(s) appointed by the Council will be:

1. To assist the Council generally in discharging its duty to promote and maintain high standards of conduct by Elected Members and Co-opted Members of Shepway District Council and the Town and Parish Councils in its area.
2. To advise the Monitoring Officer in connection with the assessment and post-investigation stage of complaints against Elected and Co-opted members.
3. To advise the Audit and Standards Committee or any sub - committee in connection with complaints and potential sanctions where a failure to comply with a code of conduct has been established.
4. To advise their view, where sought, to an Elected or Co-Opted Member of Shepway District Council or a Town and Parish Council partially or wholly within its area who is the subject of an allegation that their behaviour has breached a Code of Conduct.
5. To reach balanced and reasoned conclusions having considered complex material and applied an impartial and fair approach to all of the written and oral material provided.
6. To advise the Council on any future adoption/revision of a Members' Code of Conduct.
7. To undertake any training arranged by the Monitoring Officer (or authorised representative) to enable the Independent Person(s) to perform their role effectively.
8. It is envisaged that the views of the Independent Person will normally be sought by the Council (through the Monitoring Officer or authorised representative) in writing, either by letter or email, or at a meeting organised for the purpose of seeking such views. Where the Independent Person's views have been sought in writing, either by letter or email, it is expected that the response will be provided in the same way. However, advice may be sought by telephone from time to time.

9. In reference to paragraph 4, the Independent Person(s) should not give advice to Members of the Council, or of the Town and Parish Councils, in circumstances where no complaint about a Member's conduct has been received. Where such advice is required, it should be sought by the Members of the Council, or of the Parish Councils, from, or via, the Monitoring Officer or his/her authorised representative.
10. The Independent Person will be selected from a list of appointees prepared following public advertisement; those persons will be expected to add the necessary element of independence and objectivity to the Committee's functions.
11. The person appointed as an Independent Person must:
  - be committed to the need for high standards in public life
  - demonstrate that they can remain independent in their thinking and decision making
  - be able to make judgements based on evidence or information presented
  - have questioning skills
  - be assertive
  - be able to work within an area of public life which is open and transparent
12. The Independent Person will be expected to undertake some training by the Council in procedures and processes, especially monitoring and ensuring compliance with Codes of Conduct, Complaints Procedures, etc and where appropriate including case studies.
13. It is envisaged that meetings will normally be held in the daytime.
- (a) The Council will meet travel and subsistence expenses in accordance with its set rates. The provision of any other allowance is subject to review by the East Kent Joint Independent Remuneration Panel.
- (b) The Independent Person MUST NOT<sup>[1]</sup>
  - (i) Be, or have been during the last 5 years, a member, co-opted member or officer of Shepway District Council or a Town or Parish Council within the district; or
  - (ii) A relative or a close friend of a member, co-opted member or officer of Shepway District Council or a Town or Parish Council within the district.
  - (iii) A person is defined by the Localism Act 2011 as a relative if they are:
    - The spouse or civil partner or living as if they were a spouse or civil partner;
    - A grandparent;
    - A lineal descendant of a grandparent;
    - A parent, sibling or child;
    - The spouse or civil partner of a grandparent, lineal descendant of a grandparent, or a parent, sibling or child; or

- Living with a grandparent, lineal descendant of a grandparent, or a parent, sibling or child as if they were a spouse or civil partner.

of a member, co-opted member or officer of Shepway District Council or a Town or Parish Council within the district.

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<sup>[1]</sup> This paragraph must be read subject to the provisions of The Localism Act 2011 (Commencement No.6 and Transitional Savings and Transitory Provisions Order 2012 [SI 2012 No.1463] which permit the appointment of a person as an independent person notwithstanding that he has been an member or co-opted member of a standards committee at any time during the 5 years ending on 30 June 2012, provided that he is not a member or co-opted member of a standards committee on 1 July 2012. The exemption provided by the Order only applies to appointments made before 1 July 2013.

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This report will be made public on 3 July 2012

**Folkestone**

Hythe & Romney Marsh  
Shepway District Council



www.shepway.gov.uk

Report number

**A/12/21**

**To:** Council  
**Date:** 11 July 2012  
**Status:** Non-executive decision  
**Chief Executive:** Alistair Stewart  
**Cabinet member:** Councillor Robert Bliss, Leader of the Council

## **SUBJECT: PROPOSED PROCEDURE RULE**

**SUMMARY:** The constitutional advisory committee considered report CA/12/01 seeking a recommendation that the council adopt a procedure rule in the council, committee and executive procedure rules requiring a councillor to withdraw from the meeting when he/she has a Discloseable Pecuniary Interest or an Other Significant Interest as defined respectively in the statutory instrument and the proposed code of conduct. The views of the constitutional advisory committee will be reported to council

## **REASONS FOR RECOMMENDATIONS:**

The council is asked to agree the recommendations set out below in order to consider the proposals from the constitutional advisory committee.

## **RECOMMENDATIONS:**

- 1. To receive and note report A/12/21.**
- 2. To consider the proposals for the constitutional advisory committee on whether the council should make a procedure rule to be inserted in the council, committee and executive procedure rules requiring a member or co – opted member with a discloseable pecuniary interest or an other significant interest to withdraw from the meeting room when the matter in which he / she has an interest unless he/she has been granted a dispensation by the audit and standards committee or the Monitoring Officer (where authorised) to speak only or to speak and vote on the matter.**

## **1. INTRODUCTION**

- 1.1 The committee considered report CA/12/01 on the new standards regime to be introduced because of the provisions of the Localism Act 2011.
- 1.2 That report, which should be read in conjunction with report A/12/01 concerns a proposed procedure rule requiring withdrawal from a meeting where the councillor has a Discloseable Pecuniary Interest (“DPI”) and “An Other Significant Interest.”

## **2. DECLARATIONS OF INTEREST**

- 2.1 The Localism Act and regulations made under it introduce a new type of interest termed “discloseable pecuniary interests.”
- 2.2 If a member has a DPI in any matter, he/she must not:
  - 2.2.1 Participate in any discussion of the matter at the meeting; or
  - 2.2.2 Participate in any vote on the matter, unless he/she has obtained a dispensation allowing him/her to speak and/or vote.
- 2.3 The Council’s Code of Conduct must make the provisions the council considers “appropriate” provisions for disclosure of interests other than DPIs, but failure to comply with these requirements would be a breach of Code of Conduct but not a criminal offence. In the proposed code these other interests as known as “Other Significant Interests (“OSI’s”)
- 2.4 The proposed code intend that the two types of interest should be treated the same in that members will have to declare and withdraw from the room.
- 2.5 In order to give force to the requirement to withdraw the council will need to make a procedure rule to be inserted into the council, committee and executive procedure rules so if necessary the meeting could vote to exclude the member.

## **3. PROPOSED PROCEDURE RULE**

- 3.1 The proposed procedure placed before the constitutional advisory committee and to be inserted into the council, committee and executive rules of procedure is:

*A councillor or co-opted member with a Disclosable Pecuniary Interest or Other significant Interest in a matter to be considered, or being considered at a meeting, must withdraw from the meeting room unless he/she has been granted a dispensation by the audit and standards committee or the*



*Monitoring Officer (where authorised) to speak only or to speak and vote on the matter.*

**4. RISK MANAGEMENT ISSUES**

4.1 No perceived risks.

**5. LEGAL/FINANCIAL AND OTHER CONTROLS/POLICY MATTERS**

**5.1 Legal Officer's Comments (EC)**

The legal implications are covered in this report

**5.2 Finance Officer's Comments (GW)**

There are no financial implications that need to be considered.

**5.3 Diversities and Equalities Implications**

There are no specific Diversities and Equalities Implications arising from this report.

**10. CONTACT OFFICER AND BACKGROUND DOCUMENTS**

Councillors with any questions arising out of this report should contact the following officer prior to the meeting:

Peter Wignall, Head of Administration  
Tel: 01303 853253  
Email: [peter.wignall@shepway.gov.uk](mailto:peter.wignall@shepway.gov.uk)

The following background documents have been relied upon in the preparation of this report:

None

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