

## **COUNCIL**

**26 JULY 2012**

### **COUNCILLOR CONDUCT COMPLAINTS UNDER THE LOCALISM ACT 2011**

Portfolio Holder: Councillor Mike O'Brien, Community Safety and Customer Contact

Report from/Author: Perry Holmes, Assistant Director Legal and Corporate Services, Monitoring Officer

#### **Summary**

The Localism Act 2011 makes changes to the arrangements for the adoption of a Member Code of Conduct and for the consideration and investigation of Councillor conduct complaints by the Council.

This report proposes a revised Code of Conduct and sets out a new process that will be quicker, more efficient and better value for money.

#### **1. Budget and Policy Framework**

1.1 The Council has a statutory duty to adopt a code dealing with the conduct expected of members and co-opted members and to have in place a process for considering complaints about Councillors' conduct under the Localism Act 2011. The Council also has common law powers to take action after considering any concerns about the conduct of Councillors which can be delegated.

#### **2. Background**

2.1 The Localism Act 2011 brings to an end the previous "Standards regime". Some of the features of the previous system are retained with others being removed. Councils still need a Code of Conduct for Councillors, but the contents of this can now be determined locally. The Council must also have a system for the receipt and processing of any complaints. They also have to maintain a Register of Members "disclosable pecuniary interests"

2.2 The action that can be taken by the Council against any Councillor found to have breached the new Code is limited with the most serious sanction being censure.

- 2.3 The draft Code of Conduct and process attached to this paper has been the subject of consultation with Cabinet Members, the Standards Committee and Group Leaders.. Concerns were raised that the new proposed system must deal with problems in the previous system around delay, publicity and the opportunity for political mischief inherent in the system.
- 2.4 Work has taken place to consult relevant members to understand their concerns and to revise the proposed new arrangements.
- 2.5 The Council has ultimately to agree the new code and process but is being advised to delegate the principal function of overseeing and considering future complaints to a Councillor Conduct Committee.

### **3. Options**

- 3.1 The Council does not have an option to do nothing as the Localism Act requires certain actions to be taken by the Council.
  - 3.2 The matters where the Council does not have an option are:
    - 3.2.1 Adopting a Code of Conduct that is consistent with the following principles:
      - a. selflessness
      - b. integrity
      - c. objectivity
      - d. accountability
      - e. openness
      - f. honesty
      - g. leadership
    - 3.2.2 Putting in place arrangements for investigating and deciding what to do with allegations of misconduct by a Councillor, a Co-opted Member (or Parish Councillor).
    - 3.2.3 Appointing an “independent person” whose views must be sought and taken into account before deciding how to deal with a complaint that has been investigated.
    - 3.2.4 Establishing and maintaining a register of disclosable pecuniary interests.
  - 3.3 The Council has a number of options as to the exact format for the Code, the system to receive and process complaints, the involvement of the Independent Person and whether to have a Committee to oversee this work or not.
- ### **4. Advice and analysis**
- 4.1 Members have indicated that they wished the Council to take the opportunity to simplify the process for councillor conduct complaints, to ensure that the amount of time and resource that is engaged is proportionate and that concerns are dealt with much more quickly than at present.

- 4.2 It is considered appropriate to mark the move to a new process with a new name for the Committee of the “Councillor Conduct Committee”. It is proposed that the Committee has a membership of eight with a proportion of 5 Conservative Members and 2 Labour Member and 1 Liberal Democrat Member. This would meet the legal requirements relating to political balance in terms of the allocation of the overall number of Committee seats and the size of individual Committees.
- 4.3 Attached at appendix 1 is a draft Code of Conduct that reflects the requirements set out in 3.2.1 above. This is based on the Department for Communities and Local Government version of a draft Code, with three additions. Firstly it is proposed that the Code contain a requirement that Members complete a Register of Interests 28 days after agreeing a new Code. Secondly, that Members continue to leave the room if they have a relevant “disclosable pecuniary interest” in a matter under debate. Thirdly, that Members should register gifts and hospitality over £100. It is considered that these practical additions will protect members in the event of unfounded allegations being made. In addition, the proposed new Code sets out the legal requirements relating to disclosable pecuniary interests
- 4.4 Attached at appendix 2 is a proposed procedure for dealing with any complaints received about councillor conduct that has a number of presumptions to enable a fast, cost effective and proportionate response.
- 4.5 These presumptions include that wherever possible complaints are dealt within the relevant political Group and that Parish complaints are referred to Parish Councils for resolution.
- 4.6 There is a presumption that any resolution decision by political Group is final and will not itself give rise to a complaint except to the Local Government Ombudsman.
- 4.7 There is a working assumption that publicity about complaints will not occur until they have been investigated (although the access to information rules will be adhered to). Any publicity by a complainant might bring an end to any process since that publicity would be akin to censure at the end of a process, which is the most serious sanction that can occur.
- 4.8 There are also presumptions that informal resolution will be sought throughout and that investigations will be conducted quickly and wherever possible by correspondence.
- 4.9 There will be a recognition that the process must reflect the action that can ultimately be taken against a Councillor found to have broken the Code which is limited to:
- 4.9.1 recommending to the relevant Group Leader that a councillor be removed from a Committee or outside body.
- 4.9.2 recommending to the Leader that a councillor be removed from the Cabinet or particular portfolio responsibilities.

- 4.9.3 directing the Monitoring Officer to arrange training for a councillor.
- 4.9.4 recommending the withdrawal of council facilities or the limiting of access to council buildings (where this is appropriate having regard to the nature of the complaint).
- 4.9.5 censuring a member and publishing the outcome of the process.
- 4.10 At appendix 3 is an updated flowchart to illustrate the simplicity of the new process. It shows that the Independent Person could play the role of an independent reviewer once a complaint has been investigated but before a decision is taken on the complaint. This ensures objectivity and a further opportunity for informal resolution to be considered. It also prevents any suggestion of party political influence.
- 4.11 A recruitment exercise took place recently for the Independent Person. Twenty-two applications were received. A shortlist of six candidates were tested and interviewed by a panel comprising the Chair of the North Kent Bench, Sandra Paine, Pastor Will Grady of the Methodist Church, Richard Odle of the Youth Parliament, the Monitoring Officer and the Head of Legal Services.
- 4.12 The Panel decided to recommend the Council to appoint Linda Veloso as the Independent Person. She is a Magistrate and School Governor. Her background is that she is a Barrister of 16 years call specialising in Immigration Law cases. She also sat on the Bar Disciplinary Tribunal for 9 years dealing with disciplinary cases against judges and barristers. She has lived in Medway for 7 years and is keen to use her skills in the local community. She showed a good grasp of our proposed process and was able to analyse information in a short time to produce a balanced opinion as we will be asking her to do as part of the role.
- 4.13 The Panel also decided to propose subject to Council approval that a second reserve candidate be chosen. Were there to be a conflict of interest for Linda then it is proposed that for a short time David Radlett is appointed as needed. He is a Law Lecturer at the University of Kent where he specialises in public law, including local authority law and Human Rights. He also worked as a Prosecutions lawyer in local government. He showed an excellent grasp of the legal context of our process and the process itself. He also impressed the panel with his response to a fictitious complaint scenario with a planning theme. He showed the ability to think outside the box and to find the issues. His written test was also good.
- 4.14 It is proposed that a day rate fee of £300 is paid to be negotiated by the Monitoring Officer. Clear targets for work will be agreed in advance with the Independent Person on a case-by-case basis.
- 4.15 The proposal to delegate responsibility for resolving Parish complaints to Parish Councils reflects the fact that ultimately the Councillor Conduct Committee could only recommend action regarding a Parish councillor under the new arrangements rather than take action. Any such recommendation

would not bind the Parish Council. In the spirit of localism it is proposed that Parish councils, assisted by the Monitoring Officer, find local resolutions to any complaints that are made about their members.

- 4.16 Subject to Council approval of the new Code and Process, there will need to be some additional amendments to the linked Council codes and protocols to take account of the changes. These will be brought to the relevant Council Committees and to Full Council for approval.

## 5. Risk management

- 5.1 Risk management is an integral part of good governance. The Council has a responsibility to identify and manage threats and risks to achieve its strategic objectives and enhance the value of services it provides to the community. Using the following table this section should therefore consider any significant risks arising from your report.

<b>Risk</b>	<b>Description</b>	<b>Action to avoid or mitigate risk</b>
1. Legislation	The regulations governing “disclosable pecuniary interests” are poorly drafted and are open to several interpretations	The Monitoring Officer in preparing the Council’s arrangements has liaised with Kent Monitoring Officers and others to provide appropriate advice to members. It is anticipated that CLG may issue additional guidance in due course
2. Parish councils	Parish councils may be reticent to accept the delegation to them to resolve complaints	The Monitoring Officer has visited Parish Councils and liaised with Parish clerks to promote the benefits of the delegation and explain the assessment role Medway will continue to play;
3. Investigations	Investigations which by their nature involve the participation of a number of parties will continue to take too long to conclude	It is anticipated that the number of complaints that are investigated will reduce, the Monitoring Officer will develop a set of templates for investigation by correspondence which can be used by the Parish Councils as well

## **6. Consultation**

- 6.1 The views of the Standards Committee were obtained in March and June. Discussions have also taken place with other relevant individuals including Medway councillors, officer representatives of other Kent and local Councils, officer representatives of councils nationally and national local government experts.

## **7. Financial and legal implications**

- 7.1 There is a budget of £11,300 for the Monitoring Officer to cover the cost of investigations. It is anticipated that the likely future cost of investigating complaints will decrease and will be contained within this budget plus the fees paid to the Independent Person.
- 7.2 The legal implications of the proposals are set out in the body of the report.
- 7.3 The appointment of an Independent Person under section 28(7) of the Localism Act 2011 must be approved by a majority of the Members of the Council.

## **8. Recommendations**

- 8.1 To approve the setting up of Councillor Conduct Committee (to replace the current Standards Committee) with a membership of 8 Councillors (Con: 5, Lab 2:, Lib Dem: 1) to deal with policy, complaints against councillors and issues regarding the Code of Conduct for Councillors, with the terms of reference set out in Appendix 4 to the report.
- 8.2 To appoint Councillors Griffiths, Adrian Gulvin, Hicks, Kemp, O'Brien, Shaw, Smith and Tolhurst to the Councillor Conduct Committee for the municipal year 2012/2013 as nominated by Group Whips.
- 8.3 To approve the draft Code of Conduct for Councillors and the draft Process with effect from 26 July 2012 (or such future date as is relevant).
- 8.4 In order for Parish Councils to resolve complaints at a local level, under section 101 of Local Government Act 1972 to delegate the discharge of functions under section 28(6) of the Localism Act 2011 as it relates to Parish Councillors to the Parish Councils of Allhallows, Cliffe and Cliffe Woods, Cooling, Cuxton, Frindsbury Extra, Halling, High Halstow, Hoo St Werburgh, St James - Isle of Grain, St Mary Hoo and Stoke.
- 8.5 To authorise the Monitoring Officer to make such amendments as are necessary to other affected Codes and Protocols for future approval by the relevant Committee and Full Council as appropriate.
- 8.6 To approve the appointment of Linda Veloso as the Independent Person under section 28 (7) of the Localism Act 2011 from the date of this meeting until the end of the municipal year 2015, to carry out the functions required by section 28(7).

- 8.7 To delegate to the Monitoring Officer the appointment of David Radlett as an Independent Person under section 28 (7) of the Localism Act 2011 when Linda Veloso has a conflict of interest which prevents her carrying out her role, for any necessary period(s) within the period from the date of this meeting until the end of the municipal year 2015.
- 8.8 To designate the Monitoring Officer as the Proper Officer for the purpose of requests for dispensations from Members or co-opted Members under section 33 of the Localism Act 2011.
- 8.9 To agree consequential changes to the Constitution as set out in Appendix 5 to the report.

**Lead officer contact**

Perry Holmes, Assistant Director Legal & Corporate Services 01634 332133,  
[perry.holmes@medway.gov.uk](mailto:perry.holmes@medway.gov.uk)

**Background papers**

None





## Medway Council

### Code of Conduct

You are a member or co-opted member of Medway Council and hence you shall have regard to the following principles – selflessness, integrity, objectivity, accountability, openness, honesty and leadership.

Accordingly, when acting in your capacity as a member or co-opted member –

You must act solely in the public interest and should 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.

You must not place yourself under a financial or other obligation to outside individuals or organisations that might seek to influence you in the performance of your official duties. You should comply with the notification requirements for gifts and hospitality set out below.

When carrying out your public duties you must make all choices, such as making public appointments, awarding contracts, or recommending individuals for rewards or benefits, on merit.

You are accountable for your decisions to the public and you must co-operate fully with whatever scrutiny is appropriate to your office.

You must be as open as possible about your decisions and actions and the decisions and actions of your authority and should be prepared to give reasons for those decisions and actions.

You must declare any Disclosable Pecuniary Interests as required by law. You must also take steps to resolve any conflicts arising in a way that protects the public interest, including registering and declaring Disclosable Pecuniary Interests in a manner conforming with the procedures set out below.

You must, when using or authorising the use by others of the resources of your authority, ensure that such resources are not used improperly for political purposes (including party political purposes) and you must have regard to any applicable Local Authority Code of Publicity made under the Local Government Act 1986.

You must promote and support high standards of conduct when serving in your public post, in particular as characterised by the above requirements, by leadership and example.

## **Disclosable Pecuniary Interests**

“**DPI**” means those disclosable pecuniary interests of a description specified in regulations made by the Secretary of State (as amended from time to time) as set out in Schedule One to this Code 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

### **1. Registering and declaring Disclosable Pecuniary Interests**

You must

- (a) within 28 days of taking office as a member or co-opted member, notify Medway Council’s Monitoring Officer of any DPI
- (b) where a DPI has not been entered onto Medway Council’s register, disclose the DPI to any meeting of Medway Council or its committees or sub-committees joint committees or joint sub-committee (including a meeting of the executive or a committee of the executive) at which you are present where you have a DPI in any matter being considered and where the DPI is not a ‘sensitive interest’. <sup>1</sup>
- (c) following any disclosure of a DPI which is not on Medway Council’s register nor the subject of pending notification, notify the Monitoring Officer of the DPI within 28 days beginning with the date of disclosure.
- (d) where you are discharging a function of Medway Council (acting alone) and a DPI has not been entered onto Medway Council’s register and is not the subject of a pending notification, notify the Monitoring Officer of the DPI within 28 days of becoming aware that you have a DPI in any matter to be dealt with, or being dealt with, in discharging that function.

### **2. Participation in Meetings or Decision Making**

- (a) Unless dispensation has been granted, you may not participate in any discussion of or vote onto any matter in which you have a DPI.
- (b) Where you are discharging a function of the authority (acting alone) and you have a DPI in any matter to be dealt with or being dealt with by you in the course of discharging that function you must not take any steps or further steps, in relation to the matter (except for the purpose of enabling the matter to be dealt with by someone else).

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<sup>1</sup> A ‘sensitive interest’ is described in the Localism Act 2011 as a member or co-opted member of an authority having an interest, and the nature of the interest being such that the member or co-opted member, and the authority’s monitoring officer, consider that disclosure of the details of the interest could lead to the member or co-opted member, or a person connected with the member or co-opted member, being subject to violence or intimidation.

***Failure, without reasonable excuse, to comply with the above provisions as to notification and disclosure of DPIs and participation in a matter in which you have a DPI is a criminal offence in accordance with section 34 of the Localism Act 2011.***

### **3. Further notification and participation requirements**

In addition, Medway Council requires the following notification and participation procedures to be followed by Members. Failure to comply with these procedures will not be a criminal offence but will be a breach of this Code:

- (a) You shall within 28 days of adoption of this Code notify Medway Council's Monitoring Officer of any DPI
- (b) Unless dispensation has been granted, you must leave the room during any discussion of or vote on any matter in which you have a DPI.

### **Gifts and Hospitality**

- (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). You must also register the source of the gift, benefit or hospitality.
- (2) The Monitoring Officer will keep a Register of Gifts and Hospitality, which shall be available for inspection on request by members of the public.



# Medway Council procedure for dealing with Councillor Conduct complaints under the Localism Act 2011

## Introduction

Medway Council is committed to high standards of behaviour and conduct by Councillors who are visible community leaders. The Councillor Conduct Committee will promote high standards of behaviour and consider any concerns raised about councillor conduct.

Medway Council [and the 11 Parish Councils] has adopted a Code of Conduct that is based on the seven principles of selflessness, integrity, objectivity, accountability, openness, honesty and leadership.

The Localism Act 2011 has amended the way that Councils can deal with any concerns that are raised about the conduct of Councillors. These arrangements are how concerns about Medway Councillors and Parish Councillors will be dealt with from [1 July 2011].

## Presumptions

- There will be an overriding presumption that complaints should be settled quickly, efficiently and informally and in a way that represents value for money and takes into account the limited action that can be taken against a Councillor.
- There will be a working assumption that details of the allegations made against a Councillor should not be made public until the end of the process and only if there is an investigation (subject to the rules on access to information).
- There will be a working assumption that if a complainant makes an allegation public before it is concluded that may bring an end to the process since that publicity would be similar in gravity to the most serious action the Council could ultimately take of censure.
- There will be a presumption that any investigations will be completed quickly and where possible by correspondence.
- There will be recognition from the outset of any complaint that the action that can be recommended at the end of any process must be proportionate to the need to ensure effective administration of the Council, the welfare of its staff or the reputation of the Council.
- There will be a presumption that where a complaint is capable of resolution by a Political Group or Groups these will be referred for such resolution to the Leader and Whip of such Group or Groups.

- There will be a presumption that any resolution decision by the Groups or Groups is final and cannot of itself give rise to a complaint except to the Local Government Ombudsman.
- There will be a presumption that where a complaint involves a Parish Councillor, that this will be referred to the Parish Council concerned for resolution.

### **Making a complaint**

In the first instance if you have a concern about a Councillor arising out of their role as a councillor as opposed to their private life, you are expected to discuss your concerns with the Monitoring Officer at Medway Council by telephone on 01634 332133. The Monitoring Officer is a senior officer with a legal background. They will discuss your concern and may suggest an alternative resolution to a formal complaint.

If you wish to make a complaint you can write to the Monitoring Officer or send an email to:

Monitoring Officer  
Medway Council  
Gun Wharf  
Dock Road  
Chatham  
ME4 4TR

[perry.holmes@lmedway.gov.uk](mailto:perry.holmes@lmedway.gov.uk)

We would like you to use the attached form so that we have all the relevant information. Anonymous complaints will not normally be considered.

### **You can expect:**

- An acknowledgement of your complaint within 5 working days from the Monitoring Officer.
- That the Monitoring Officer will inform the subject Councillor that a complaint has been received (unless to do so would prevent proper consideration of the complaint)
- That you will be kept informed about the progress of your complaint.

### **The Process**

The process we will follow is set out below and is also illustrated by the attached diagram.

There are four main stages to our process; Assessment, Investigation Independent Review & Conclusion. At each stage we will be looking to quickly and informally resolve your concern.

In the **Assessment** stage we will decide against the following criteria and based on the presumptions above whether we will investigate your concern or seek to resolve it in another way:

- Is the complaint about a councillor when they were acting in that capacity?
- Is the complaint actually one that should be referred to another agency to investigate?
- Is the concern capable of being dealt with by a Political Group/s?
- Is the concern raised about a Parish Councillor?
- Is the matter too old (over 12 months ago)?
- Is the concern better dealt with by some other process or body?
- In all the circumstances bearing in mind what action can be recommended, is this concern likely to be addressed by an investigation?

We could decide to take no action, suggest an informal resolution or send your complaint for investigation.

In the **Investigation** stage we will seek to get more information about your concern and then put the information we have into a report. We will put the emphasis on speedy investigations completed remotely through correspondence to speed up the process and provide better value for money. If a complaint is withdrawn at any stage we will discontinue the process including any investigation.

In the **Independent Review** stage we will present all the information to an Independent Person who has no links to the Council to seek their opinion on how to proceed. We have to take their opinion into account.

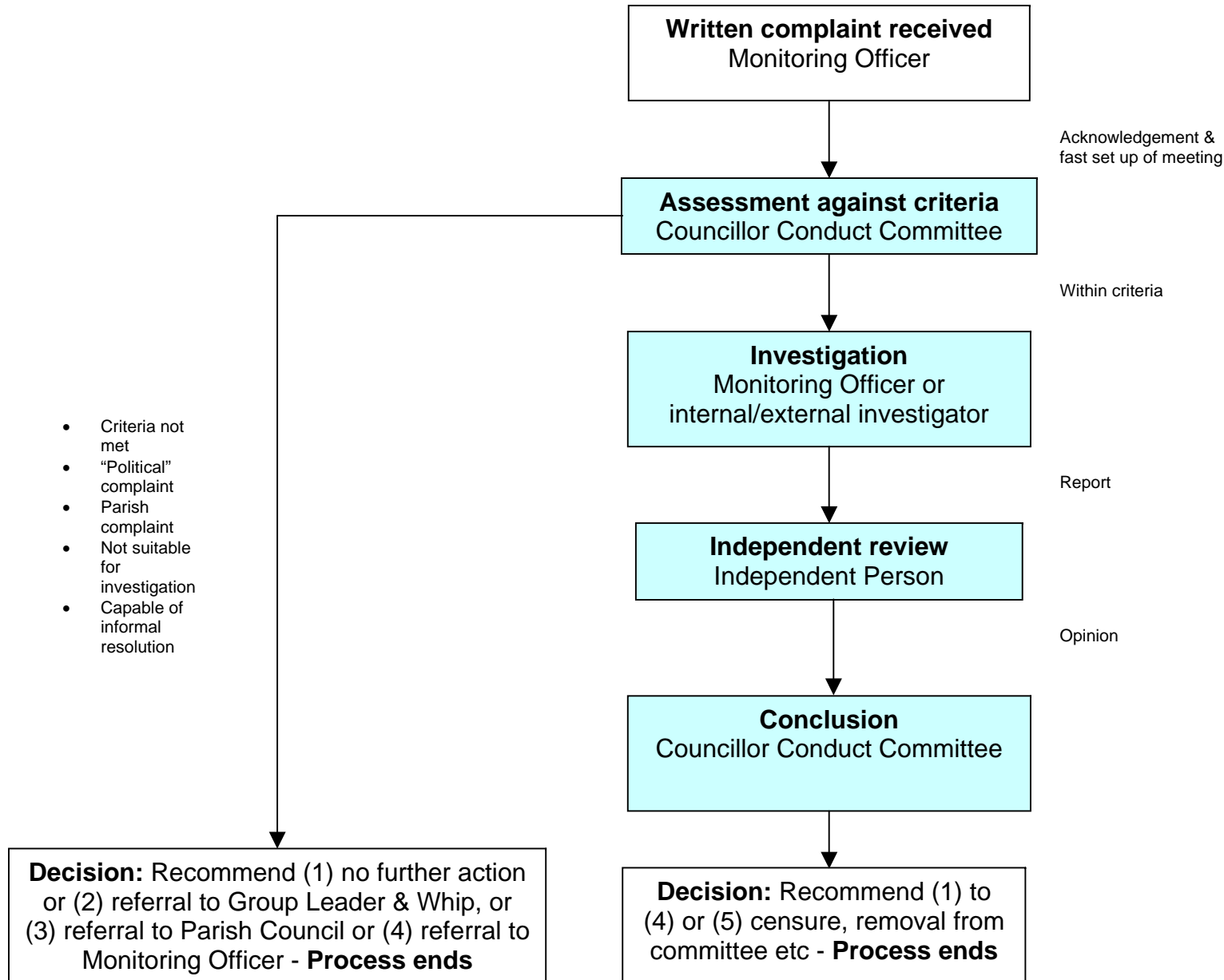
In the **Conclusion** Stage the investigation report and the Independent Person's opinion will be presented to a Committee of Councillors. This may be a paper process or you may have to attend to be asked questions. A decision will be made how to resolve the complaint. You will be notified of the outcome.





## Process

## Appendix 3





## **9. ARTICLE 9 - THE COUNCILLOR CONDUCT COMMITTEE**

### **9.1 Councillor Conduct Committee**

The Council has established a Councillor Conduct Committee

### **9.2 Composition**

#### **(a) Political Balance**

The Councillor Conduct Committee will be politically balanced

#### **(b) Quorum**

The Quorum of the Councillor Conduct Committee shall be three Councillors.

### **9.3 Role and Function**

The Councillor Conduct Committee will have the following roles:

- To promote and maintain high standards of conduct by Councillors, co-opted members and church and parent governor representatives;
- To advise the Council on the adoption or revision of the Councillor Code of Conduct or on revision to the adopted arrangements for investigation or making decisions on complaints;
- To monitor the operation of the Councillor Code of Conduct;
- To advise, train or arrange to train Councillors, co-opted members and church and parent governor representatives on matters relating to the Councillor Code of Conduct;
- The assessment against published criteria, investigation and hearing of allegations of Councillor misconduct and recommending any action which the Council has the power to take;
- The exercise of all of the above in relation to the parish Councils wholly or mainly in its area and the members of those parish Councils save where the functions are delegated.
- The adoption of any procedures necessary in order to undertake any of the above functions.
- To grant dispensations to Councillors or co-opted members in accordance with s33 of the Localism Act 2011 allowing Councillors or co-opted members to take part in debate and vote on any item in which they have a disclosable pecuniary interest,

#### **9.4 Assessment, investigation and resolution of complaints**

The Councillor Conduct Committee will deal with complaints in the following way

- (a) The Committee will receive allegations that a Councillor or co-opted member of the Council or the 11 Parish Councils has breached the Councillor Code of Conduct.
- (b) Upon receipt of each allegation and any accompanying report by the Monitoring Officer, the Committee shall decide either:
  - (i) to refer the allegation to the relevant Leader and Whip of a political group for resolution
  - (ii) to refer the allegation to a Parish council for resolution
  - (iii) to refer the allegation to the Monitoring Officer for informal resolution such as the provision of training
  - (iv) to refer the allegation to the Monitoring Officer for investigation of the allegation;
  - (v) to decide that no action should be taken in respect of the allegation;

and shall ask the Monitoring Officer to notify the person making the allegation and the member concerned of that decision.

- (d) The Committee shall state reasons for its decision.

#### **9.5 Considering the outcome of an investigation**

- (a) If the Committee decides to refer the allegation to the Monitoring Officer for investigation it shall receive the report of any investigator and the opinion of the Independent Person.
- (b) The Committee may on receipt of the report, the opinion and any written representations decide whether a breach of the Councillor Code of Conduct has occurred and if so what action to recommend.
- (c) The Committee may on hearing all relevant parties and in accordance with an agreed procedure, decide whether a breach of the Councillor Code of Conduct has occurred and if so what action to recommend.
- (d) The Committee shall state reasons for its decision.

## Appendix 5

### New Councillor Conduct arrangements under the Localism Act 2011– consequential changes to Constitution

Current Constitutional provisions	Suggested change
Contents Page	Substitute Councillor Conduct Committee for Standards Committee under Article 9
<p>Chapter 1 – Summary and Explanation</p> <p>Page 1.1 Para 2.2</p> <p>Page 1.2 - Para 3.2</p> <p>Page 1.3 - Local People's Rights Para 7.4</p>	<p>Refer to Councillor Conduct Committee (article 9) instead of Standards Committee</p> <p>Councillors have to agree to follow a code of conduct to ensure high standards in the way they undertake their duties. The <u>Councillor Conduct Standards</u> Committee trains and advises them on the code of conduct. <del>The Committee has also established sub-committees to deal with complaints of misconduct by a Councillor.</del></p> <p>Local People have the right to</p> <ul style="list-style-type: none"> <li>complain to <del>the the Councillor Conduct Committee Standards Board for England</del> if they have evidence which they think shows that a Councillor has not followed the Council's code of conduct;</li> </ul>

Page 2.4 – Article 2 – Members of the Council Para 2.3 (b)  
Rights and Duties

**(b) Rights and duties**

- Councillors have rights to access the documents, information, employee advice, land and buildings of the Council needed to undertake their duties.
- Councillors must not disclose or make public confidential or exempt information or information given in confidence except where
  - they have the consent of the person authorised to give it;
  - they are required by law to do so;
  - the disclosure is reasonable and in the public interest and made in good faith and does not breach any reasonable requirements of the Council.

Councillors are encouraged to seek advice from the Monitoring Officer if contemplating the disclosure of confidential or exempt information.

- For these purposes, “confidential” and “exempt” information are defined in the access to information rules in part 2 of chapter 4 of this constitution.

<p>Page 2.6 Article 3 – Local People and the Council          Para 3.1 (d) Complaints</p>	<p style="text-align: center;"><b>(a) Complaints</b></p> <p style="text-align: center;">Citizens have the right to complain to:</p> <ul style="list-style-type: none"> <li>• the Council itself under its complaints scheme;</li> <li>• the local government ombudsman;</li> <li>• the Standards Committee about a breach of the members' code of conduct. These complaints should be addressed to the Monitoring Officer, Medway Council, Gun Wharf, Dock Road, Chatham</li> </ul>
<p>Page 2.21 Article 9 – The Standards Committee</p>	<p>Delete Article 9 and substitute new text set out in Appendix 4 to this report.</p>
<p>Page 2.30 Article 11 Employees          Para 11.3 Functions of the Monitoring Officer</p>	<p><b>Functions of the Monitoring Officer</b></p> <p style="text-align: center;"><b>(a) Maintaining the constitution</b></p> <p style="text-align: center;">The Monitoring Officer will maintain an up-to-date version of the constitution and will ensure that it is widely available for consultation by members, employees and the public.</p> <p style="text-align: center;"><b>(b) Ensuring lawfulness and fairness of decision making</b></p> <p style="text-align: center;">After consulting with the Head of Paid Service and</p>

Chief Finance Officer, the Monitoring Officer will report to the Council or to the Leader and Cabinet in relation to an executive function if he or she considers that any proposal, decision or omission would give rise to unlawfulness or if any decision or omission has given rise to maladministration. Such a report will have the effect of stopping the proposal or decision being implemented until the report has been considered by the Council or Cabinet as appropriate.

(c) **Supporting the Councillor Conduct Standards Committee**

The Monitoring Officer will contribute to the promotion and maintenance of high standards of conduct through provision of support to the Councillor Conduct Standards Committee.

(d) **Receiving reports**

~~The Monitoring Officer will receive and act on reports made by Ethical Standards Officers and decisions of the case tribunals.~~

(e) **Conducting investigations**

~~The Monitoring Officer will conduct investigations into matters referred by ethical standards officers and make reports or recommendations in respect~~



~~of them to the Standards Committee.~~

(f) **(d) Proper officer for access to information**

The Monitoring Officer will ensure that Cabinet decisions, together with the reasons for those decisions and relevant officer reports and background papers are made publicly available as soon as possible.

(g) **(e) Advising whether Cabinet decisions are within the budget and policy framework**

The Monitoring Officer will advise whether decisions of the Cabinet are in accordance with the budget and policy framework.

(h) **(f) Providing advice**

The Monitoring Officer will provide advice on the scope of powers and authority to take decisions, maladministration, financial impropriety, probity and budget and policy framework issues to all Councillors.

(i) **(g) Restrictions on posts**

The Monitoring Officer cannot be the Chief Finance Officer or the Head of Paid Service.

	<p>References: (Section 5), Local Government and Housing Act 1989  <del>Sections 60, 64–66, Local Government Act 2000</del>  Chapters 8 and 9, DETR Guidance  <u>Sections 26 –33 Localism Act 2011</u></p>
<p>Chapter 3 – Part 2 - Responsibility for Council functions  Page 3.7 and pages 3.14 to 3.16</p> <p>Page 3.9</p>	<p>Membership and Functions of Standards Committee</p> <p>Delete text relating to Standards Committee and Sub Committees and insert membership and terms of reference for Councillor Conduct Committee as set out in Appendix 4 to this report</p> <p>Employment Matters Committee – add to terms of reference:</p> <p>To grant exemptions for politically restricted posts</p>
<p>Chapter 4 – Rules</p> <p>Part 1 – Council Rules</p> <p>Page 4.3 Para 1.1 Timing and business</p> <p>Page 4.13 Para 18.7</p>	<p>Substitute Councillor Conduct Committee for Standards Committee in 7<sup>th</sup> bullet point</p> <p>There shall be no substitution on Cabinet, <del>Standards Committee</del> or area Committees, <del>with the exception of a named substitute for the parish Council representatives on the Standards Committee.</del></p>

<p>Chapter 4 – Rules Part 2 – Access to Information Rule</p> <p>Page 4.23 Para 1 : Rule 1 - Scope</p> <p>Page 4.26 Para 10.4 – Meaning of Exempt Information</p>	<p>Substitute Councillor Conduct Committee for Standards Committee</p> <p>Delete para 10.4 as follows:</p> <p><del>In addition to the categories of exempt information set out in paragraph 10.4 above, the Standards Committee, and its sub-committees, of the Council shall also have the benefit of the provisions contained in the Relevant Authorities (Standards Committee) Regulations 2001 as amended.</del></p>
<p>Chapter 4 – Rules Part 5 – Overview and Scrutiny Rules</p> <p>Page 4.47 Para 2 – Who may sit on Overview and Scrutiny Committees?</p>	<p><b>Who may sit on Overview and Scrutiny Committees?</b></p> <p>All Councillors except members of the Cabinet may be members of an Overview and Scrutiny Committee. However, no member may be involved in scrutinising a decision with which he/she has been directly involved.</p>
<p>Chapter 4 – Rules</p>	<p><b>Declaration of interests</b></p>

<p>Part 6 – Contract Rules</p> <p>Page 4.127 Para 4.8 Declaration of Interests</p>	<p>4.8.1. If it comes to the knowledge of a Member or an Officer of the Council that a contract in which he or she has a <u>disclosable</u> pecuniary interest has been or is proposed to be entered into by the Council, he or she shall immediately give written notice to the Council's Monitoring Officer and record it <del>in</del> the register of interests.</p>
<p>Chapter 5 - Codes and Protocols Part 1 Pages 5.1 to 5.11 Ten general principles of public life and Members' Code of Conduct</p>	<p>Delete general principles of public life and Code of Conduct Substitute new Code of Conduct agreed by Council on 26 July 2012</p>
<p>Chapter 5 – Codes and Protocols Part 4 – Protocol on Member/Employee Relations Page 5.45 Par 15.4 Declaring Interests</p>	<p>Declaring interests</p> <p>(a) <u>The rules for registering and declaring interests by Councillors are set out in the Councillor's Code of Conduct. If an officer has a pecuniary or other interest in a matter before the Council, the Cabinet or other Committee of the Council they will declare that interest. If it is substantial they will leave the room while the matter is under discussion. Both members and employees will declare in Committee any financial interests of any sort, and any non-financial interests. Under the Council rules they will be asked to leave the meeting while the item in which they have declared a substantial interest is discussed.</u></p>

	<p>(b) The guiding principle for both members and employees is that their conduct should be seen by the public to be beyond reproach. <del>Declarations of interest shall be made in a way that makes it clear to everyone present, including the public, exactly what the nature of the interest is. Failure by a member to register or declare a financial interest is a criminal offence.</del></p> <p>(c) A voluntary register of declarations of wider interests <del>for members is held in the Chief Executive's office. A similar register</del> is kept for directors and assistant directors, who must enter present personal membership of any organisation, whether public, voluntary or charitable.</p>
<p>Chapter 5 – Codes and Protocols  Part 6 – Code of Governance  Page 5.69 - Ensuring that organisational values are put into practice and are effective</p> <p>Part 8 – Antifraud and Corruption Policy  Page 5.89 Para 4 The ten general principles of public life</p>	<p>Substitute Councillor Conduct Committee for reference to a Standards Committee in third paragraph of second column</p> <p>Delete para 4.1</p> <p>Amend Para 4.2 as follows and re-number as 4.1 :  The Council <del>has adopted</del><del>will be adopting</del> a new Member Code of Conduct in accordance with the Localism Act 2011 <del>, in 2012.</del>  This Code must (in line with the Localism Act 2012) be consistent with the following principles</p>

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|  | <ul style="list-style-type: none"><li>• Selflessness</li><li>• Integrity</li><li>• Objectivity</li><li>• Accountability</li><li>• Openness</li><li>• Honesty</li><li>• Leadership</li></ul> |
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