

COUNCIL

12 OCTOBER 2017

REVIEW OF THE COUNCIL'S MEMBER CODE OF CONDUCT

Report from: Perry Holmes, Chief Legal Officer/Monitoring Officer

Summary

The Member Code of Conduct was adopted by the Council on 26 July 2012 and has recently been reviewed by the Monitoring Officer. Arising from that review this report recommends some changes to the Council's Member Code of Conduct, following initial consideration by the Councillor Conduct Committee on 13 September 2017.

1. Budget and Policy Framework

- 1.1 The Monitoring Officer has an obligation to monitor and keep the operation of the Constitution under review. The Member Code of Conduct is included in the Council's Constitution. Contributing to the promotion and maintenance of high standards of conduct through provision of support to the Councillor Conduct Committee is a key function of the Monitoring Officer.
- 1.2 Minor changes to the Council's Constitution may be made by the Monitoring Officer under delegated authority with a copy of such changes being supplied to all Group Leaders and Group Whips within 14 days. All other changes must be approved by Full Council after consideration of a report from the Monitoring Officer.
- 1.3 Adoption of a Code of Conduct, and any subsequent revisions or replacements must be approved by Full Council. The Councillor Conduct Committee has a remit to determine the arrangements and procedures for dealing with allegations relating to Member Conduct.

2. Background

- 2.1 The Localism Act 2011 and subordinate legislation made significant changes to the Councillor Conduct regime for English local authorities providing more discretion for local authorities to determine their own local arrangements to meet the statutory requirement to promote and maintain high standards of conduct by elected and voting co-opted Members. The changes included

withdrawal of a national model Code of Conduct and removal of the requirement to have a Standards Committee.

2.2 In summary, since 2012 the Council has been required to:

- have in place a Code of Conduct, which must include provisions it considers appropriate in respect of the registration and disclosure of pecuniary and non-pecuniary interests. (Members are required by law to register specified Disclosable Pecuniary Interests(DPIs)).
- ensure that its Code, when viewed as a whole, is consistent with the Seven Principles of Public Life.
- publicise the adoption, revision or replacement of its Code of Conduct.
- have arrangements in place for investigating and making decisions in relation to allegations about Member conduct. (Allegations relating to Parish Councillors have to be dealt with under these arrangements by Medway as the relevant Principal Authority).
- appoint at least one independent person whose views must be taken into account before the Council makes a decision on any particular allegation it has decided to investigate. The view of the Independent person may also be requested by the Council on any allegation more generally and also by any Councillor, Parish Councillor or voting co-opted Member if that person's behaviour is the subject of an allegation.
- establish and maintain a register of Members and voting co-opted Members Interests.

2.3 The Department for Communities and Local Government (DCLG) published indicative text for a Code of Conduct soon after the Localism Act came into force and models were also suggested by organisations such as the Local Government Association and the National Association of Local Councils. In September 2013 the DCLG published a plain English guide for Councillors on openness and transparency on personal interests and a revised illustrative text for a Code of Conduct. The guide said "all sitting councillors need to register their declarable interests – both declarable pecuniary interests, and other interests that must be declared and registered as required by your authority's code, or your duty to act in conformity with the seven principles of public life, such as your membership of any Trade Union. Any suggestion that you should tell the Monitoring Officer about your pecuniary interests only in the aftermath of your being elected is wholly incompatible with this duty, with which you must comply".

2.4 The Council's current Member Code of Conduct was adopted by the Council on 26 July 2012. The Medway Code is a lighter touch version of the original illustrative Code issued by the DCLG with three additions; a requirement that Members register their interests within 28 days of the Code being adopted, that Members continue to leave the room if they have a DPI in a matter at a meeting and that gifts and hospitality exceeding £100 in value should be

registered. More recently the Council agreed to add a paragraph to the Code on the use of social media by Councillors.

- 2.5 The procedures for dealing with complaints relating to Member Conduct have been agreed by the Councillor Conduct Committee. Since July 2012, 15 complaints in total have been considered and dealt with by the Committee: 8 relating to Medway Councillors and 7 about Parish Councillors. This represents a significant reduction in the volume of complaints as compared with 2011 when, in one year, 4 complaints relating to Medway Councillors were received and 24 about Parish Councillors. Under the current arrangements the Monitoring Officer has been able on occasion to informally resolve a number of complaints before they have reached the formal stage over the five year period. Of those that have been dealt with under the formal procedures the majority have resulted in no further action.
- 2.6 A review of the Member Code of Conduct and the various documents that support it has recently been concluded. This report sets out the conclusions from the review with recommendations for some additions to the Code of Conduct and some variations to the procedures for handling complaints based on practical application of the rules and emerging best practice five years on from the introduction of the revised legislative framework. Particular regard has been had to the degree to which Members have been asking to register or making disclosures of a range of non-pecuniary interests (as opposed to Disclosable Pecuniary Interests) some of which amount to “other significant interests”. There is an absence of any detailed guidance in our Code of Conduct or provision in the Register of Interests for this.

3. Review conclusions and recommendations

- 3.1 Overall the review has concluded that Medway’s Code of Conduct and the associated procedures have worked well. However, there is a gap in relation to rules on the registration and disclosure of interests other than disclosable pecuniary interests.
- 3.2 It is a matter for the Council to determine what it considers appropriate for inclusion in the Code of Conduct in relation to the registration and disclosure of interests other than disclosable pecuniary interests. Whilst the Act provides local discretion on this it also requires the Monitoring Officer to enter into the register any interest notified to him under Section 31 of the Localism Act whether or not it is a DPI (i.e. those interests disclosed subsequent to the registration of interests within 28 days of a person becoming a Member or co-opted Member of the Council). For this reason and because the Medway Code requires Members to have regard to the Seven Principles of Public Life it is considered that the inclusion of a requirement to register specified non-pecuniary interests and to disclose these and any “ other significant interests” will clearly demonstrate that Members are meeting their obligation to resolve any conflicts of interest arising between their pecuniary **and** non-pecuniary interests and their public duties as a Councillor. This is the approach which has been adopted by a large number of other local authorities. It also reflects the fact that, in a wish to be transparent, Members regularly disclose interests at meetings which are significant but are not DPIs and withdraw.

3.3 In addition to recommending inclusion of clear rules on the registration of specified non-pecuniary interests and the disclosure of these and “other significant interests” some other revisions are suggested in the light of the practical application of the Code over the last five years. The current Code is attached at Appendix B. A revised version is attached at Appendix A for consideration by Members. The table below summarises the recommended changes:

Inclusion of a preamble to the Code	This explains the legislative framework, provides a fuller description of the Seven Principles of Public Life and the potential for a criminal offence to arise as a consequence of a failure to meet the requirements in relation to the registration and disclosure of Disclosable Pecuniary Interests.
Inclusion of a requirement for non-voting co-opted Members of Council Committees to comply with the Code and to register and disclose the same interests as elected Members and voting co-opted Members	Whilst the provisions of the Localism Act relating to Member Conduct (and the consequential criminal offence arising in the event of non-compliance) apply only to elected Members and voting co-opted Members it is considered that non-voting co-optees should be required to agree to comply with the Code and the obligation to register and disclose interests. This will secure a clear understanding that participation in Council business is prohibited where a non-voting co-optee has a pecuniary or significant other interest which could generate a conflict between their private position and their capacity to wield significant influence by participating in the discussion of a matter at the relevant Committee. It should be noted that these Members also have access to exempt and confidential reports thereby strengthening the case for their compliance with the Code of Conduct.
Inclusion of sections on General Conduct, disclosing and accessing information, use of Council resources and acting in the public interest	These sections commonly appear in Codes of Conduct adopted by other local authorities and serve to highlight particular strands within the seven principles of public life. There is a link to separate guidance on use of Council resources issued by the Councillor Conduct Committee.
Disclosable Pecuniary Interests	This section has been expanded to clarify the rules on registration and disclosure of DPIs and how to apply for a dispensation.
Registration of non-pecuniary interests and action required when “Other significant Interests” (OSIs) arise	This requires the registration of specified non-pecuniary interests involving membership of outside bodies appointed to by the Council and the holding a position of general control or management on other specific categories of outside bodies. Members would also be able to register other OSIs on request. Action required at meetings when OSIs arise is set out. A facility to apply for a dispensation to

	enable participation and/or voting when an OSI arises has been added.
Gifts and Hospitality	It is proposed to include a section on gifts and hospitality in the form for registering interests which are published on the Council's website. This will improve transparency.

- 3.4 If the recommended changes are agreed there will need to be a minor change to the Members Planning Code of Good Practice and the Member Licensing Code of Good Practice to make reference to the provisions in the Code of Conduct on Other Significant Interests. These proposed changes are shown as tracked revisions in Appendices F and G and reflect already established practice at the Planning Committee and Licensing and Safety Committee and its Sub Committees.
- 3.5 Finally, consequential changes to Article 9 in the Council's Constitution (which includes the Terms of Reference of the Councillor Conduct Committee) would be required as set out in Appendix C.

4. Consultation

- 4.1 The majority of the eleven Parish Councils in Medway decided to adopt the same Code of Conduct as Medway in 2012 although this was not obligatory. Should the Councillor Conduct Committee accept the changes recommended in this report the Monitoring Officer will notify the Parish Councils of the proposed changes and the timescale for submission of the revisions to full Council for approval (expected to be the Council meeting of 12 October 2017) with a go live date of 1 January 2018 which will allow time for training and briefings on the changes for Members. The Parishes will be encouraged to adopt the revised Code of Conduct as there is significant merit in having one Code of Conduct for both tiers of local government in the area as it sets common standards of conduct (which is especially relevant to dual-hatted Members). Otherwise the Councillor Conduct Committee may have to assess and deal with complaints with reference to a multiplicity of Codes.
- 4.2 Whilst there is no requirement to consult the public on the proposed changes to the Code of Conduct the Council is required to publicise the adoption, revision or replacement of its Code of Conduct.

5. Councillor Conduct Committee

- 5.1 The Councillor Conduct Committee considered a report on the proposals on 13 September 2017. In addition, the Committee also considered issues relating to guidance and procedures relating to Member conduct. Whilst these are matters which fall within the remit of the Committee, the changes which were presented to the Committee in respect of the guidance and procedures are set out in Appendices D and E for Members' information.
- 5.2 In addition to minor presentational changes it was recommended to the Committee that the Monitoring Officer be delegated authority to deal with requests for dispensations in cases where the timing of a request would make

it impractical to convene a meeting of the Committee. In addition, it was also recommended that the following revisions were necessary to ensure the procedures align with statutory provisions:

- The presumption in Appendix D stating that the process may be ended if a complainant makes an allegation public before it is concluded should explicitly state that this will not apply in cases involving allegations of non-compliance with provisions in the Code of Conduct relating to the registration and disclosure of DPIs. Clearly any consequential criminal proceedings will have to take their course and it is not open to the Councillor Conduct Committee or the Monitoring Officer to discontinue the process, irrespective of any publicity surrounding the complaint.
- The provision for referral of complaints relating to the Conduct of a Parish Councillor to the relevant Parish Council must be removed. Recent case law has confirmed that the Localism Act requires complaints about Parish Councillor Conduct to be dealt with by the relevant Principal Authority. The delegation of this function to the Parishes agreed by the Council in 2012 must now be revoked.
- In light of these two changes the steps within the agreed screening criteria for processing complaints must be revised as shown in Appendix E.

- 5.3 At the Committee meeting on 13 September 2017, the Chief Legal Officer detailed the proposed changes to the Code, this included the declaration and registration of non-pecuniary interests and the declaration of other significant interests. He also informed the Committee that it would be necessary to remove the provision for referral of complaints relating to the conduct of a Parish Councillor to the relevant Parish Council (this should be dealt with by Medway Council in accordance with the Localism Act 2011, supported by recent case law).
- 5.4 In addition, it was proposed that non-voting co-opted members of Council committees would be required to comply with the Code. Other proposed changes included the Code being updated to include a preamble, a reference to the Seven Principles of Public Life (Nolan), updates to the Planning and Licensing Codes of Good Practice to ensure consistency across the Codes as well as a review of the associated procedures.
- 5.5 Members then raised a number of comments and questions which included:
- 5.5.1 **Whether Members would be required to register an interest if they were a Council appointee to an outside body** – the Chief Legal Officer confirmed that Members would be required to declare such an interest and that this was covered in schedule 2 (non-pecuniary interests) to the revised Code.
- 5.5.2 **Given it was proposed for the revised Code to take effect from 1 January 2018, would Members be asked to submit a new registration form in January and then an update form after Annual Council in May (as was current practice), and did the law specify whether Members were**

required to formally submit updated forms, even if there were no changes – the Chief Legal Officer confirmed that it was the Council’s preference that Members formally submit the annual update forms even when there was no change and that the proposal would remain for the revised Code to take effect from January 2018 unless Members wished to defer the start date until May 2018.

5.5.3 Whether the proposed revisions would sufficiently deal with the issue about complaints against Councillors acting in capacity – the Chief Legal Officer stated that this matter had arisen on a number of occasions and whilst it was already stated clearly in the Code, the issue was dealt with during Member training events. However, following discussion, it was considered that there would be some merit in providing more guidance on the issue in the Councillor Conduct Complaint Form (Appendix D to the report), to assist those who may be considering in making a complaint against a Councillor. The Chief Legal Officer undertook to update the Councillor Conduct Complaint Form accordingly.

5.6 The Committee recommended the following to Full Council for approval:

5.6.1 The proposed revisions to the Council’s Member Code of Conduct as set out in paragraphs 3.1 to 3.3 of the report and Appendix A to the report, to take effect from 1 January 2018.

5.6.2 The consequential changes to Article 9 of the Constitution (which includes the terms of reference of the Councillor Conduct Committee) as set out in Appendix C to the report.

5.6.3 The associated changes proposed to the Members’ Planning Code of Good Practice and the Members’ Licensing Code of Good Practice to align the provisions relating to other significant interests and speaking at meetings as set out in paragraph 3.5 of the report and Appendices F and G to the report.

5.6.4 The revocation of the delegation of authority to Parish Councils to deal with complaints relating to the conduct of Parish Councillors, previously agreed by the Council, as these have to be dealt with by the relevant Principal Council under the Localism Act, as outlined in paragraph 3.4 of the report.

5.6.5 To encourage that Parish Councils adopt the new Code of Conduct adopted by Medway Council.

5.7 The Committee approved the following, **subject to approval of the matters set out in recommendations 5.6.1 to 5.6.5 above, by Full Council.**

5.7.1 The changes to the Interests Registration Form (at Appendix H to the report) for introduction on 1 January 2018.

5.7.2 The procedures and guidance for the processing of complaints as set out in paragraph 3.4 of the report and in Appendices D and E to the report subject to the Chief Legal Officer elaborating further on the issue of what constitutes acting in capacity.

- 5.7.3 To delegate authority to the Monitoring Officer to consider and determine any requests for dispensations from Medway Members and voting and non-voting co-opted Members in cases where the timing of a request would make it impractical to convene a meeting of the Committee.
- 5.7.4 That the Monitoring Officer provides support and training for Members on the changes to the Member Code of Conduct and associated Codes and procedures ahead of the new Code taking effect on 1 January 2018.

6. Chief Legal Officer's comments

- 6.1 The Councillor Conduct Committee asked that Appendix D (which includes the Councillor Conduct Complaint Form) sets out further detail clarifying the matter of what constitutes Members acting in capacity. The Councillor Conduct Complaint Form has been updated to reflect the Committee's comments and to provide further clarity regarding Councillors or Co-opted Members acting in their official capacity.

7. Financial, Legal and risk management Implications

- 7.1 The legal implications are set out in the body of the report. Section 9FA of the Local Government Act 2000 provides a power for local authorities to include non-voting co-opted Members in the membership of Overview and Scrutiny Committees. Medway has a number of non-voting co-opted Members on the Children and Young People and the Health and Adult Social Care Overview and Scrutiny Committees. The proposal to require these non-voting co-optees to comply with the Code, including the provisions relating to the registration and disclosure of interests, is not envisaged in the Localism Act but can be agreed by the Council as it would be consistent with the duty to promote and maintain high standards of conduct. A criminal offence will not arise for these Members as a consequence of any breach of the provisions relating to DPIs. The role of the Councillor Conduct Committee will need to be extended to provide for consideration of any complaints relating to the conduct of non-voting co-opted Members and any applications from them for dispensations.
- 7.2 There are no financial implications. Any costs associated with processing and investigating complaints relating to Member Conduct are met from within a budget held by the Monitoring Officer.
- 7.3 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. Article 14 of the Council's Constitution places an obligation on the Monitoring Officer to monitor and review the operation of the Constitution to ensure that its aims and principles are given full effect. It is important that this is done on an ongoing and regular basis to minimise the risk of the Council failing to operate its governance arrangements in line with current legislation and best practice.

8 Recommendations

8.1 Full Council is asked to agree the following:

8.1.1 The proposed revisions to the Council's Member Code of Conduct as set out in paragraphs 3.1 to 3.3 above and Appendix A, to take effect from 1 January 2018.

8.1.2 The consequential changes to Article 9 of the Constitution (which includes the terms of reference of the Councillor Conduct Committee) as set out in Appendix C.

8.1.3 The associated changes proposed to the Members' Planning Code of Good Practice and the Members' Licensing Code of Good Practice to align the provisions relating to other significant interests and speaking at meetings as set out in paragraph 3.5 above and Appendices F and G.

8.1.4 The revocation of the delegation of authority to Parish Councils to deal with complaints relating to the conduct of Parish Councillors, previously agreed by the Council, as these have to be dealt with by the relevant Principal Council under the Localism Act, as outlined in paragraph 3.4 of the report.

8.1.5 To encourage that Parish Councils adopt the new Code of Conduct adopted by Medway Council.

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Appendices

Appendix A – Draft revised Code of Conduct

Appendix B – Current Code of Conduct

Appendix C – Article 9 of Medway Council's Constitution (which includes the terms of reference of the Councillor Conduct Committee)

Appendix F – Members' Planning Code of Good Practice

Appendix G – Members' Licensing Code of Good Practice

Note: The following appendices are attached for Members' information following their agreement by the Councillor Conduct Committee on 13 September 2017, subject to Full Council's approval of the recommendations at paragraphs 8.1.1 to 8.1.5 above.

Appendix D – Procedure for dealing with Member conduct complaints

Appendix E – Procedural guidance for investigations about Member conduct allegations

Appendix H – Revised form for registering interests and gifts and hospitality

Background papers

None

Preamble

- (A) This Code of Conduct has been adopted by Medway Council to support its duty to promote and maintain high standards of conduct by Members of the Council as required by the Localism Act 2011. It sets out general obligations about the standards of conduct expected of members and co-opted members of the authority, together with provisions about registering and declaring interests. A flow chart summarising the rules on participation at meetings can be found at [Appendix 2](#).
- (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 below. This Preamble and the Seven Principles of Public Life do not form part of the Code, but you should have regard to them as they will help you to comply with the Code.
- (C) 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.
- (D) Except in the case of non-voting co-opted members, in accordance with section 34 of the Localism Act 2011, where you have a [Disclosable Pecuniary Interest](#) it is a criminal offence if, without reasonable excuse, you:
- (i) Fail to notify the Authority's Monitoring Officer of the interest before the end of 28 days beginning with the day on which you became a member.
 - (ii) Fail to disclose the interest at Meetings where the interest is not entered in the Authority's register.
 - (iii) Fail to notify the Authority's Monitoring Officer of the interest before the end of 28 days beginning with the date of disclosure at a meeting, if the interest is not entered in the Authority's register and is not the subject of a pending notification.
 - (iv) Take part in discussion or votes, or further discussions or votes, at Meetings on matters in which you have the interest which are being considered at the meeting.
 - (v) Fail to notify the Authority's Monitoring Officer of the interest before the end of 28 days beginning with the date when you become aware that you have such an interest in a matter to be dealt with, or being dealt with, by you acting alone in the course of discharging a function of the Authority.
 - (vi) Take any step in relation to a matter being dealt with by you acting alone in the course of discharging a function of the Authority, except a step for the purpose of enabling the matter to be dealt with otherwise than by you.
 - (vii) Knowingly or recklessly provide false or misleading information in any of the above disclosures or notifications.
- (E) 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. Except in relation to the matters referred to in paragraph (D) above which will give rise to a criminal offence, 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.

Seven Principles of Public Life

You should have regard to the following principles:

Selflessness	Holders of public office should act solely in terms of the public interest.
Integrity	Holders of public office must avoid placing themselves under any obligation to people or organisations that might try inappropriately to influence them in their work. They should not act or take decisions in order to gain financial or other material benefits for themselves, their family, or their friends. They must declare and resolve any interests and relationships.
Objectivity	Holders of public office must act and take decisions impartially, fairly and on merit, using the best evidence and without discrimination or bias.
Accountability	Holders of public office are accountable to the public for their decisions and actions and must submit themselves to the scrutiny necessary to ensure this.
Openness	Holders of public office should act and take decisions in an open and transparent manner. Information should not be withheld from the public unless there are clear and lawful reasons for so doing.
Honesty	Holders of public office should be truthful.
Leadership	Holders of public office should exhibit these principles in their own behaviour. They should actively promote and robustly support the principles and be willing to challenge poor behaviour wherever it occurs.

Medway Council Member Code of Conduct

1. Scope

You are an elected Member or a co-opted Member of Medway Council.

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

Where you act as the Council's representative:

- a) On another local authority body, you must comply with that body's code of conduct.
- b) On any other body, you must comply with this Code, except to the extent that it conflicts with any lawful obligation which that body is subject to.

Non-voting co-opted Members of Medway Council must also comply with the provisions of this Code

2. General Conduct

2.1 You must not:

- i) conduct yourself in a manner which could reasonably be regarded as bringing the Council or your position into disrepute.
- ii) act in a bullying manner.
- iii) intimidate or attempt to intimidate any person who is or is likely to be a complainant, a witness or be dealing with an investigation or proceedings in relation to an allegation that a member (including yourself) has failed to comply with this code of conduct.
- iv) do anything which compromises or is likely to compromise the impartiality of those who work for the Council or on its behalf.

3. Disclosing and Accessing Information

3.1 You must not disclose information given to you in confidence, or information which you believe or ought reasonably to know is confidential, except where:

- (a) you have the consent of a person authorised to give it; or
- (b) you are required by law to disclose the information; or
- (c) you disclose the information to a third party to obtain legal advice, provided that the third party agrees not to disclose the information to any other person; or
- (d) you disclose the information reasonably, in the public interest, in good faith and in compliance with the requirements of the Council.

3.2 You must not prevent another person from gaining access to information which that person is legally entitled to.

4. Using the Council's Resources

4.1 You must, when using or authorising the use by others of the resources of the 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 should have regard to the [guidance](#) issued by the Councillor Conduct Committee on the use of council resources.

5. Making Decisions

- 5.1 You are accountable for your decisions to the public and you must co-operate with whatever scrutiny is appropriate to your office.
- 5.2 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.

6. Acting in the Public Interest

- 6.1 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.
- 6.2 You must not place yourself under a financial or other obligation to individuals or organisations that might seek to influence you inappropriately in the performance of your official duties. In all decision making you should carefully consider whether your impartiality has been compromised as a consequence of being lobbied.
- 6.3 When carrying out your public duties you must make all choices, such as making appointments, awarding contracts, or recommending individuals for rewards or benefits, on merit.

7. Social Media

- 7.1 You must not publish on social media material that a reasonable person would consider offensive or abusive.
- 7.2 You should be aware that members of the public may perceive you to be acting as a Councillor or co-opted Member even when you are acting in your personal capacity. This includes everything you publish on social media. It is your responsibility to make it clear in any posts/tweets, etc. whether you are acting in your personal capacity or as a Councillor or co-opted Member.

INTERESTS

8. Disclosable Pecuniary Interests (“DPIs”)

- 8.1 “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.
- 8.2 You will have a DPI in a matter being considered at a Council meeting where your DPI is closely aligned to the business of the Council agenda item and where the interest 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.

9. Registering Disclosable Pecuniary Interests

- 9.1 You must give written notice to the Council’s Monitoring Officer of any DPI within 28 days of taking office as a member or co-opted member and within 28 days from when you become aware of any new DPI or any change to one already registered.
- 9.2 Following any disclosure at a meeting of a DPI which is not entered on Medway Council’s register of interests or the subject of pending notification, you must notify the Monitoring Officer in writing of the DPI within 28 days beginning with the date of disclosure.
- 9.3 Where you are discharging a function of Medway Council (acting alone) and a DPI has not been entered onto Medway Council’s register of interests and is not the subject of a pending notification, you must notify the Monitoring Officer in writing 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.

10. Disclosing Disclosable Pecuniary Interests

- 10.1 If you are present at a meeting and you know you have a DPI in any matter to be considered, you must disclose the existence and nature of the DPI at the start of the meeting, or when the interest becomes apparent, even if the DPI has already been registered.
- 10.2 If you have a [sensitive interest](#), you need not disclose the nature of your interest but merely the fact that you have a DPI in the matter.

11. Participation in Meetings or Decision Making when you have a DPI

- 11.1 Unless a [dispensation](#) has been granted, if you are present at a meeting and you have a DPI in a matter to be considered you must:
- a) not take part in any discussions of the matter.
 - b) not take part in any vote on the matter.

c) leave the meeting room (including the public gallery).

11.2 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).

12. Other Significant Interests (OSIs)

12.1 You will have an OSI in a matter being considered at a Council meeting where your interest is closely aligned to the business of the Council agenda item and where the business affects the financial position or well being of the following to a greater extent than most inhabitants of the area affected by the decision:

- i) you;
- ii) a member of your family or friends or any person with whom you have a [close association](#);
- iii) any person or body from whom you have accepted or received any [gifts or hospitality](#) as specified in [Schedule Two](#);
- iv) any outside body or group specified in [Schedule Two](#) of which you are a member or in a position of general control or management (as relevant).

And where a member of the public with knowledge of the relevant facts would reasonably think that your interest is so significant that it would be likely to prejudice your judgement of the public interest.

13. Participation in Meetings or Decision Making when you have an Other Significant Interest (OSI)

13.1 Unless a dispensation has been granted, if you are present at a meeting and you have an OSI as defined in [paragraph 12](#) in a matter you must disclose the existence and nature of the interest at the start of the meeting, or when the interest becomes apparent.

13.2 If you have a [sensitive interest](#), you need not disclose the nature of your interest but merely the fact that you have an OSI in the matter.

13.3 You must:

- a) not take part in any discussion of the matter
- b) not take part in any vote on the matter
- c) leave the meeting room (including the public gallery).

13.4 Where you are discharging a function of the authority (acting alone) and you have an OSI 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).

14. Dispensations

14.1 Where you have a [Disclosable Pecuniary Interest](#) or other significant [interest](#) you may still be able to participate and/or vote at a meeting if you have obtained a

dispensation from the [Councillor Conduct Committee](#). A dispensation request [form](#) is attached to the Code (Appendix 1).

- 14.2 There are 5 circumstances in respect of which a dispensation may be granted, namely:
- (a) that so many members of the decision-making body have disclosable pecuniary interests or OSIs in a matter that it would impede the transaction of the business;
 - (b) that, 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;
 - (c) that the dispensation is in the interests of persons living in Medway;
 - (d) that without a dispensation, no member of the Cabinet would be able to participate in this matter, or
 - (e) that it is otherwise appropriate to grant a dispensation.

15. Registration of Non Pecuniary Interests and Gifts and Hospitality

- 15.1 The Council has decided that you must register certain non-pecuniary interests as defined in [Schedule Two](#) to this Code. It is only your interests which have to be registered and not those of your spouse or civil partner. You must also register any gifts or hospitality in accordance with [paragraph 16.2](#) of the Code.
- 15.2 You must give written notice to the Council's Monitoring Officer of any non-pecuniary interest or any gifts or hospitality which the Code requires you to register within 28 days of taking office as a member or co-opted member and within 28 days from when you become aware of any new interest or receive any new gifts or hospitality or become aware of any change to anything already registered.
- 15.3 Where you are discharging a function of Medway Council (acting alone) and any non-pecuniary interest or gifts or hospitality which the Code requires you to register have not been entered onto Medway Council's register and are not the subject of a pending notification, you must notify the Monitoring Officer of the interest or the gift or hospitality within 28 days of becoming aware of the interest or from receiving any gift or hospitality in any matter to be dealt with, or being dealt with, in discharging that function.

16. Gifts and Hospitality

- 16.1 From time to time Members may be offered gifts and hospitality.
- 16.2 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.

Interpretation

In this Code:

“**Authority**” means the Medway Council.

“**Close association**” means someone with whom you are in regular or irregular contact over a period of time, who is more than an acquaintance, and is someone whom a reasonable member of the public might think you were prepared to favour or disadvantage when discussing a matter that affects them.

“**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 voting or non-voting 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.

“**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 [Schedule One](#) to the 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.

“**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 voting and non-voting Co-opted Members.

“Non-pecuniary interests” means those interests as set out in Schedule Two which the Code requires a Member to register.

“**Other Significant Interest**” means where your interest is closely aligned to the business of the Council agenda item and where the business affects the financial position or well being of the following to a greater extent than most inhabitants of the area affected by the decision:

- v) you;
- vi) a member of your family or friends or any person with whom you have a [close association](#);
- vii) any person or body from whom you have accepted or received any gifts or hospitality as specified in [Schedule Two](#);
- viii) any outside body or group specified in [Schedule Two](#) of which you are a member or in a position of general control or management (as relevant).

And where a member of the public with knowledge of the relevant facts would reasonably think that your interest is so significant that it would be likely to prejudice your judgement of the public interest.

Appendix A

“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 and the register of specified non-pecuniary interests and gifts and hospitality under this Code.

“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.

SCHEDULE ONE – DISCLOSABLE PECUNIARY INTERESTS

Interest	Description
Employment, office, trade, profession or vocation	<p>Any employment, office, trade, profession or vocation carried on for profit or gain.</p> <p><i>Note:</i></p> <ul style="list-style-type: none"> (a) <i>the nature of every employment, business, office, trade, profession or vocation that you or your husband/wife/civil partner or a person with whom you are living as husband/wife or as if you are civil partners have which is carried on for profit or gain, with a short description of the job concerned</i> (b) <i>the name and address of the employer</i> (c) <i>if you or your husband/wife/civil partner or a person with whom you are living as husband/wife or as if you are civil partners, are employed by a company, the name and address of the company paying your or their wages or salary, not that of the ultimate holding company</i> (d) <i>the name and address of any company for which you or your husband/wife/civil partner or a person with whom you are living as husband/wife or as if you are civil partners, are a paid director</i> (e) <i>the name and address of any firm in which you or your husband/wife/civil partner or a person with whom you are living as husband/wife or as if you are civil partners have, are a partner.</i> (f) <i>where you or your husband/wife/civil partner or a person with whom you are living as husband/wife or as if you are civil partners hold an office, the name of the person or body which appointed you or your husband/wife/civil partner or a person with whom you are living as husband/wife or as if you are civil partners.</i>
Sponsorship and election expenses	<p>Any payment or provision of any other financial benefit:</p> <ul style="list-style-type: none"> i) in respect of any expenses incurred by you in carrying out your duties as a Member, or ii) towards your election expenses <p>Made or provided in the 12 months before you declared your interests on becoming a Member.</p> <p>This includes any payment or financial benefit from a trade union.</p> <p><i>Note:</i></p> <p><i>Name of any person or body (other than Medway Council) who has made a payment to you in respect of your election or any expenses you have incurred in carrying out your duties as a Member.</i></p>

Contracts	<p>Any contract you or any person listed in paragraph 8.2 (b) of the Code, (or a body in which any of the latter have a beneficial interest) have with Medway Council for works, services or supplies which has not been fully discharged.</p> <p><i>Note:</i></p> <p><i>Describe the subject matter and the length of all contracts (goods, services or works) which are not fully discharged:</i></p> <p>(a) <i>between you or your husband/wife/civil partner or a person with whom you are living as husband/wife or as if you are civil partners, and the Council;</i></p> <p>(b) <i>between you and a firm in which you are a partner, or a company of which you are a paid director or a corporate body in which you have shares of a value described below in “Securities”;</i></p> <p>(c) <i>between your husband/wife/civil partner or a person with whom you are living as husband/wife or as if you are civil partners and a firm in which they are a partner, or a company of which they are a paid director or a corporate body in which they have shares of a value described below in “Securities”.</i></p>
Land	<p>Any beneficial interest in land within the area of Medway Council.</p> <p><i>Note:</i></p> <p><i>The address or a brief description of the property (e.g. houses, land and buildings) in the area of Medway, which you or your husband/wife/civil partner or a person with whom you are living as husband/wife or as if you are civil partners, own, lease or rent (other than leases or tenancies with the Council).</i></p>
Licences	<p>Any licence (alone or jointly with others) to occupy land in the area of Medway Council for a month or longer.</p> <p><i>Note:</i></p> <p><i>The address or a brief description of the property (e.g. houses, land and buildings) in the area of Medway, which you or your husband/wife/civil partner or a person with whom you are living as husband/wife or as if you are civil partners, occupy under licence (alone or jointly with others), for a month or longer.</i></p>

<p>Corporate tenancies</p>	<p>Any tenancy where (to your knowledge):</p> <p>(a) the landlord is Medway Council; and</p> <p>(b) the tenant is a body in which you or your spouse or civil partner or a person who you are living with as husband or wife or as if you are civil partners has a beneficial interest.</p> <p><i>Note:</i></p> <p><i>The address or a brief description of the property where:</i></p> <p>(a) <i>you, or a firm in which you are a partner, a company of which you are a paid director or a person or a corporate body in which you have shares of a value described in "Securities" below, are lessees or tenants of the Council;</i></p> <p>(b) <i>your husband/wife/civil partner or a person with whom you are living as husband/wife or as if you are civil partners or a firm in which they are a partner, or a company of which they are a paid director or a corporate body in which they have shares of a value described in "Securities" below, are lessees or tenants of the Council.</i></p>
<p>Securities</p>	<p>Any beneficial interest in securities of a body which (to your knowledge) has a place of business or land in the area of Medway Council and:</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> <p><i>Note:</i></p> <p><i>Name the company or other body which to your knowledge has a place of business or land in the area of Medway in which you or your husband/wife/civil partner or a person with whom you are living as husband/wife or as if you are civil partners have a shareholding of more than £25,000 (face value) or have a stake of more than 1/100th of the total issued share capital (whichever is the lower).</i></p>

SCHEDULE TWO – NON-PECUNIARY INTERESTS

Interest	Description
<p>Appointments to an outside body by the Council</p> <p>Membership of other outside bodies or groups as specified in this Schedule.</p>	<p>Any body of which you are a member or in a position of general control or management and to which you have been appointed or nominated by the Council.</p> <p>Any body of which you are in a position of general control or management which:</p> <ul style="list-style-type: none"> i) exercises functions of a public nature (e.g. Parish Council, Health, Police or Fire Authority) ii) is directed to charitable purposes (e.g. an Industrial and Provident Society or Charitable Body) or; iii) includes as one of its principal purposes the influence of public opinion or policy (e.g. any political party or trade union, Professional Association, Civic Society or Interest Group (e.g. National Trust, RSPB, Greenpeace))

Appendix 1

Medway Council Dispensation Request Form

Please give full details of the following in support of your application for a dispensation.

If you need any help completing this form please contact the [Monitoring Officer](#).

Your name	
Decision-making body in respect of which you require a dispensation	
Details of your membership of that body	
The business for which you require a dispensation (refer to agenda item number if appropriate)	
Details of your interest in that business	
Date of meeting or time period (up to 4 years) for which dispensation is sought	
Dispensation requested to participate in any discussion of that business	Yes/No
Dispensation requested to participate in any vote taken on that business	Yes/No

Signed.....

Dated.....

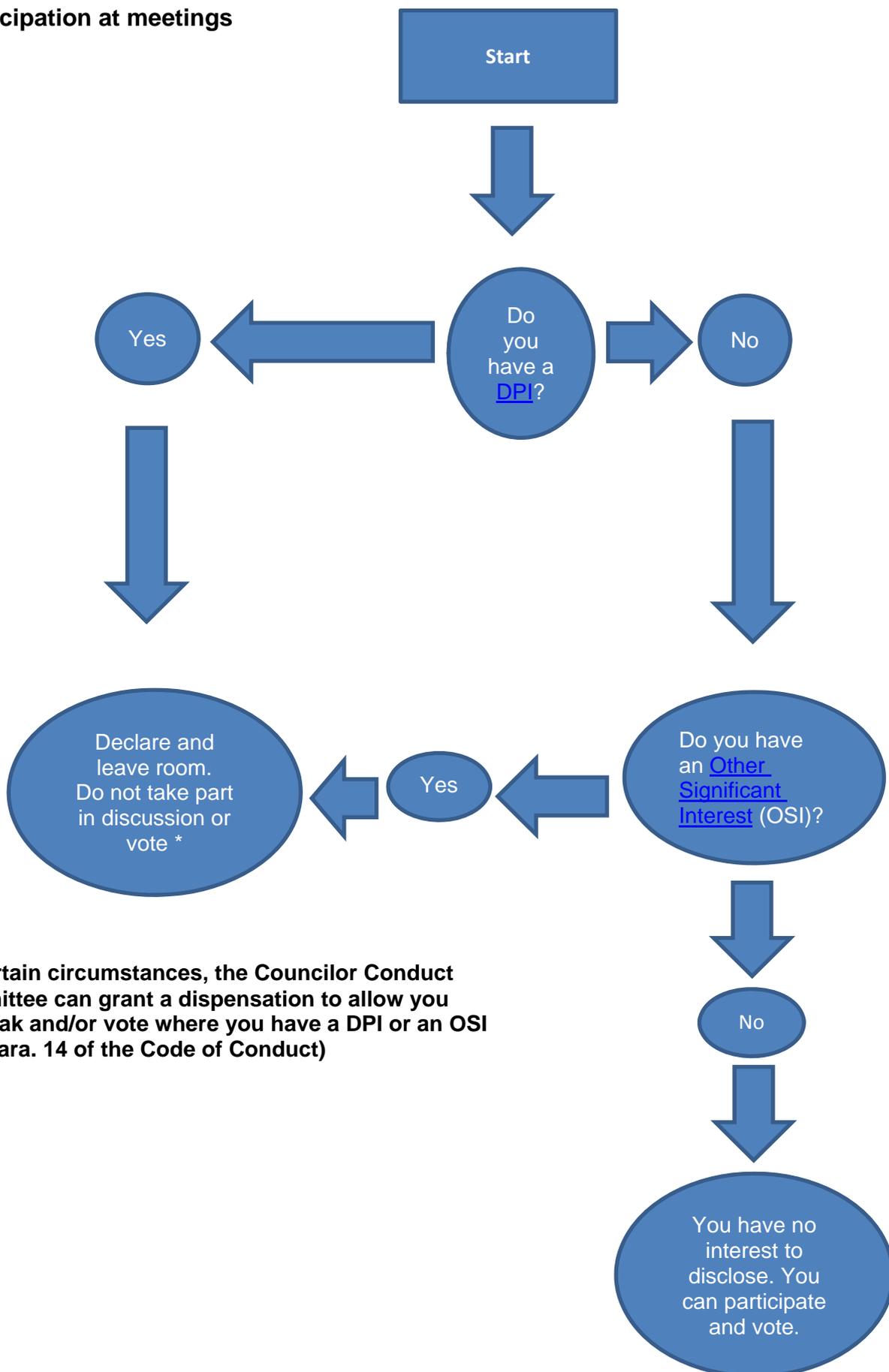
Please send your completed form to:

Perry Holmes
Monitoring Officer
Medway Council
Gun Wharf
Dock Road
Chatham

ME4 4TR

Or email to
perry.holmes@medway.gov.uk

Appendix 2 - Guide to Participation at meetings



***In certain circumstances, the Councilor Conduct Committee can grant a dispensation to allow you to speak and/or vote where you have a DPI or an OSI (see para. 14 of the Code of Conduct)**

APPENDIX B

CHAPTER 5 - CODES AND PROTOCOLS

PART 1 - MEMBERS' 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 use 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.

You must not publish on social media material that a reasonable person would consider offensive or abusive.

You should be aware that members of the public may perceive you to be acting as a councillor even when you are acting in your personal capacity. This includes everything you publish on social media. It is your responsibility to make it clear in any posts/tweets, etc whether you are acting in your personal capacity or as a councillor.

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’.¹
- (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.

¹ 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.

- (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).

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'S CODE OF CONDUCT
SCHEDULE ONE

Interest	Description
Employment, office, trade, profession or vacation	Any employment, office, trade, profession or vocation carried on for profit or gain.
Sponsorship	Any payment or provision of any other financial benefit (other than from the relevant authority) made or provided within the relevant period in respect of any expenses incurred by M in carrying out duties as a member, or towards the election expenses of M. This includes any payment or financial benefit from a trade union within the meaning of the Trade Union and Labour Relations (Consolidation) Act 1992.
Contracts	Any contract which is made between the relevant person (or a body in which the relevant person has a beneficial interest) and the relevant authority: (a) under which goods or services are to be provided or works are to be executed; and (b) which has not been fully discharged.
Land	Any beneficial interest in land which is within the area of the relevant authority.
Licences	Any licence (alone or jointly with others) to occupy land in the area of the relevant authority for a month or longer.
Corporate tenancies	Any tenancy where (to M's knowledge): (a) the landlord is the relevant authority; and (b) the tenant is a body in which the relevant person has a beneficial interest.
Securities	Any beneficial interest in securities of a body where: (a) that body (to M's knowledge) has a place of business or land in the area of the relevant authority; and (b) either (i) the total nominal value of the securities exceeds £25,000 or one hundredth of the total issued share capital of that body; or (ii) if the share capital of that body is of more than one class, the total nominal value of the shares of any one class in which the relevant person has a beneficial interest exceeds one hundredth of the total issued share capital of that class.

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 and ,voting and non-voting 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 and,voting and non-voting 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 and voting and non-voting co-optees~~or co-opted members in accordance with s33 of the Localism Act 2011 allowing Councillors or co-opted members to~~ allow participation in debate and/or voting take part in debate and vote on any item in which they have a disclosable pecuniary interest or other significant 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 voting or non-voting co-opted member of the Council or the 11 Parish Councils has breached the relevant 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~~; to refer the allegation to another body
 - (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 relevant Councillor Code of Conduct has occurred and if so what action to recommend.
- (d) The Committee shall state reasons for its decision.



Medway Council's procedure for dealing with MemberCouncillor Conduct complaints under the Localism Act 2011

1. Introduction

Medway Council is committed to high standards of behaviour and conduct by Councillors and Co-opted members who are visible community leaders. The Councillor Conduct Committee will promote high standards of behaviour and consider complaints raised about potential breaches of the Members' code of councillor conduct.

Medway Council and the 11 Parish Councils have each adopted a Code of Conduct that is based on the seven principles of public life selflessness, integrity, objectivity, accountability, openness, honesty and leadership.

~~The Localism Act 2011 amended the way that Councils can deal with any concerns that are raised about the conduct of Councillors. These arrangements regarding Medway Councillors and Parish Councillors applied from 1 July 2011.~~

It is important to note that the Councillor Conduct Committee can only look into complaints about a breach or potential breach of the Members'Councillor Code of Conduct. The Councillor Conduct Committee will use this procedure to determine how to deal with complaints, having regard to the flowchart at Appendix A and the Screening Process Flowchart Tables (attached at Appendix B+)

2. Presumptions

- 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 MemberCouncillor.
- Details of the allegations made against a MemberCouncillor 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).
- If a complainant makes an allegation public before it is concluded that may bring an end to the process since that publicity cwould be similar in gravity

to the most serious action the Council could ultimately take of censure. This presumption will not apply in cases involving allegations of non-compliance with provisions in the Members' Code of Conduct relating to the registration and disclosure of Disclosable Pecuniary Interests as criminal proceedings may arise which cannot be discontinued by the Councillor Conduct Committee or the Monitoring Officer irrespective of publicity surrounding the complaint.

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

3. Making a complaint

In the first instance if you have a concern about a ~~MemberCouncillor~~ arising out of their role as a ~~Membercouncillor~~ 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.

Complaints should be made within six months. The Committee is only likely to accept complaints that are older than six months where there are exceptional circumstances, for example, it is about an event or incident that took place more than 6 months ago, but did not come to light until recently, and the complainant brought it forward as soon as it had come to light.

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

Perry Holmes, Monitoring Officer
 Medway Council, Gun Wharf, Dock Road, Chatham, Kent, ME4 4TR
perry.holmes@medway.gov.uk

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

4. 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.
- That only the Members on the Councillors ~~on the~~ Conduct Committee will consider your complaint as the meeting will usually be ~~it is~~ held in closed session ~~'exempt session'~~, in order to preserve the confidentiality of the process.

5. The Process

~~The process we will follow is set out below and is also illustrated by the attached diagram (Appendix 2).~~

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

The process we will follow is illustrated in the diagram at Appendix A.

5.1 In the **Screening** stage your complaint will be assessed ~~we will decide~~ against the following assessment criteria, as set out in the attached screening table at Appendix B and ~~based on~~ the presumptions above. This process will determine whether we will investigate your concern or seek to resolve it in another way. At this stage the Monitoring Officer will provide advice about process and the law. It will be a matter for the Councillor Conduct Committee to decide what action to take.

- ~~Is the conduct complained of older than 6 months?
(If complaint is made about an event that occurred 6 – 12 months ago, unless there are exceptional circumstances, it will not be investigated)* see note below:~~
- ~~Is the complaint about a councillor when they were acting in that capacity?~~
- ~~On the face of the complaint is the conduct something, which is a potential breach of the Code of Conduct?~~

- ~~• Is the complaint one that should be referred to another body to investigate?~~
- ~~• Is the complaint about a Parish Councillor and it would be more appropriate for the issue to be resolved locally by the Parish Council?~~
- ~~• Could the complaint be dealt with by a Political Group?~~
- ~~• Is the complaint capable of being resolved by an investigation, bearing in mind the sanctions available?~~
- ~~• Bearing in mind the circumstances of the complaint, would it be disproportionate to investigate?~~

~~We~~ ~~The Committee may~~ ~~could~~ decide to take no action, suggest an informal resolution, seek the views of the Independent Person, or send your complaint for investigation.

~~Complaints should be made within six months. The Committee are only likely to accept complaints that are older than six months where there are exceptional circumstances, for example, it is about an event or incident that took place more than 6 months ago, but did not come to light until recently, and the complainant brought it forward as soon as it had come to light~~

- 5.2 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.
- 5.3 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.

Assessment of Complaint – Independent Person’s views

The Localism Act 2011 provides that the Committee **must** seek, and take into account the views of the Independent Person before it makes a decision on an allegation that it has decided to investigate (section 28(7)(a) of the Localism Act). The Act also provides that the Committee **may** seek the views of the Independent Person in relation to an allegation at any other stage within the complaints procedure (section 28(7)(b) of the Localism Act).

The Independent Person is appointed by Full Council. A second Independent Person is also appointed, (“the Second Independent Person”), in the event that at any stage the Independent Person has any conflict of interest that prevents him/her from carrying out the role.

~~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 the an Independent Person, who has no links to the Council, to seek their opinion on how to proceed. The Councillor Conduct Committee has We have to take their opinion into account.~~

5.4 In the **Conclusion** Stage the investigation report and the Independent Person's opinion will be presented to the Councillor Conduct Committee, 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.

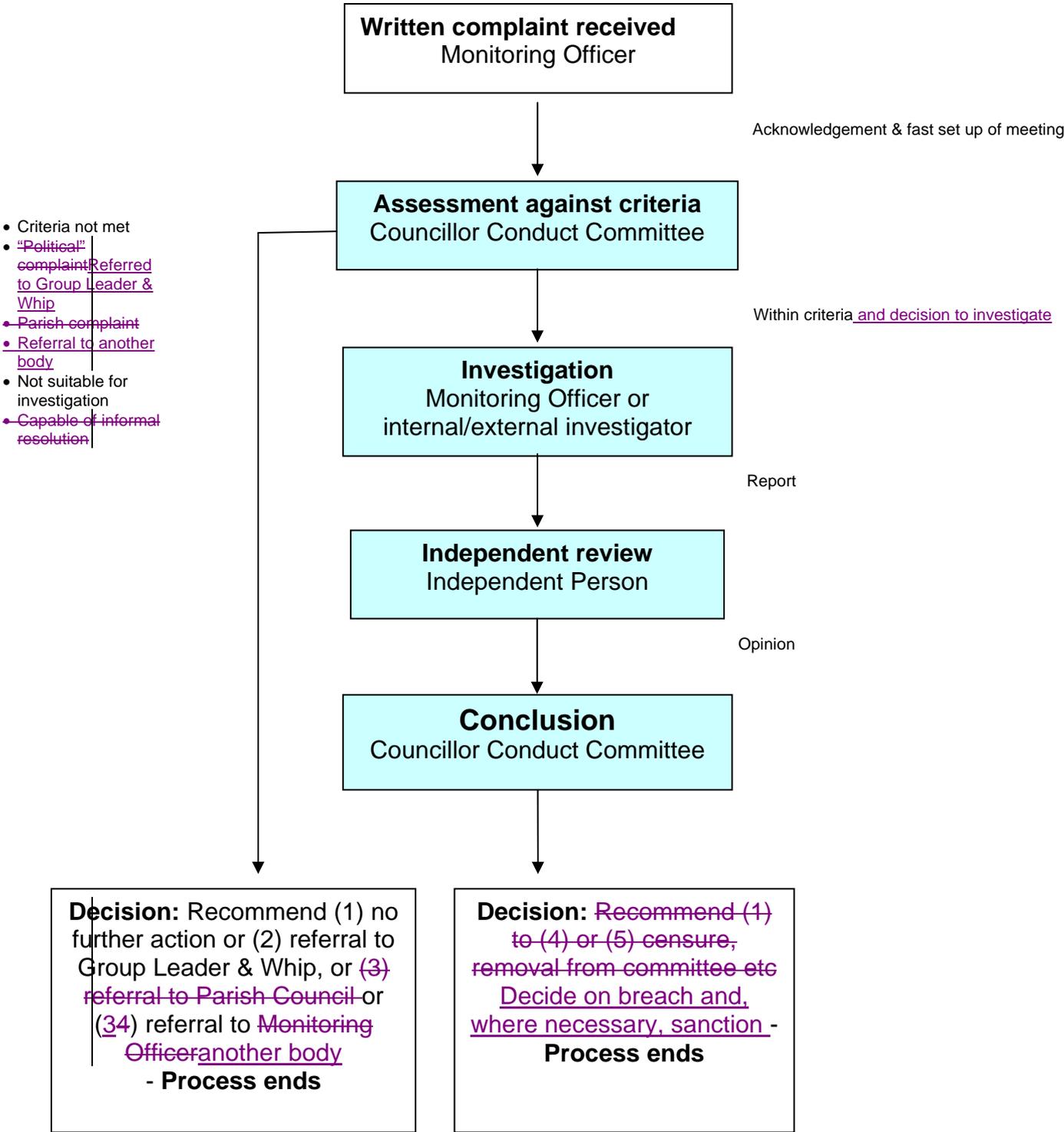
Before reaching its decision, the Complainant and subject Member have the right to make submissions as to the appropriate sanction (if any). Where the decision is communicated in writing, the Council will re-convene the Councillor Conduct Committee~~Panel Hearing~~ to consider the question of sanction. In such situations, the subject Member~~Councillor~~ will be invited to submit their representations in writing to the Monitoring Officer in advance of the re-convened hearing.

6. If you are not satisfied with how your complaint has been dealt with

There is no right of appeal by either party against a decision of the Monitoring Officer or of the recommendations or decisions of the Councillor Conduct Committee.

There is a right for any complainant, who is a member of the public, to refer the matter to the Local Government Ombudsman (LGO). The LGO does not have any powers to overturn the decision of the Committee but may ask the Committee to reconsider the matter or change its procedures if there is evidence of maladministration.

COMPLAINTS PROCESS FLOWCHART



- Criteria not met
- ~~“Political” complaint~~ Referred to Group Leader & Whip
- ~~Parish complaint~~ Referral to another body
- Not suitable for investigation
- ~~Capable of informal resolution~~

MEDWAY COUNCIL SCREENING PROCESS FOR COUNCILLOR CONDUCT COMPLAINTS

Q	Medway Council Screening Process	Circle as necessary	Subsequent action
1	Is the complaint about an allegation under Section 34 of the Localism Act 2011? <i>(i.e. a potential breach of the Member's obligations relating to their Disclosable Pecuniary Interests)</i>	NO	Move onto Q2
		YES	Consider the allegation under the Legal Jurisdiction Test — see below set out at 6.1.2 of the Localism Act 2011 – s.34 <i>Criminal Offence Investigations in Kent and Medway Protocol.</i>
2	Is the conduct complained of older than 6 months? <i>(If complaint is about an event that occurred 6-12 months ago, unless there are exceptional* circumstances, it will not be investigated).</i>	NO	Move onto Q3
		YES	No Further Action (NFA) unless exceptional circumstances
3	Is the complaint about a <u>Medway Councillor, co-opted Member or Parish Councillor</u> when acting in that capacity?	NO	NFA
		YES	Move onto Q4
4	On the face of the complaint, is the conduct something which is a potential breach of the Councillor Code of Conduct?	NO	NFA
		YES	Move onto Q5
5	Is the complaint one that should be referred to another body to investigate?	NO	Move onto Q6
		YES	NFA and refer to relevant body e.g. Police, HMRC
6	Is the complaint about a Medway Parish Councillor	NO	Move onto Q7
		YES	Refer to Parish Council for resolution

<u>67</u>	Could the complaint be dealt with by a Political Group?	NO	Move onto Q <u>78</u>
		YES	Refer to Political Group for resolution
<u>78</u>	Is the complaint capable of being resolved by an investigation bearing in mind the sanctions available	NO	NFA
		YES	Move onto Q <u>89</u>
<u>89</u>	Bearing in mind the circumstances of the complaint would it be disproportionate to investigate?	NO	Investigate
		YES	NFA
Outcome of the Medway Council Screening Criteria Process?			

**"Exceptional circumstances" could include an event or incident that took place more than 6 months ago, but did not come to light until recently, and the complainant brought it forward as soon as it has come to light.

Legal Jurisdiction Criteria Test

<u>Test</u>	<u>Yes</u>	<u>No</u>
a) <u>Did the alleged conduct (take place) after the commencement of section 34 of the Localism Act?</u>		
b) <u>Was the person complained of a member of the Council at the time of the alleged conduct</u>		
c) <u>Was the person complained of acting in an official capacity at the time of the alleged conduct?</u>		
d) <u>Did the alleged conduct occur when the person complained of was acting as a member of another authority?</u>		
e) <u>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?</u> <u>Please refer to the Code of Conduct</u>		
f) The complaint is not about dissatisfaction with the Council's decisions, policies and priorities.		
Has the Legal Jurisdiction Criteria Test been met requiring a referral to the police?		

MEDWAY COUNCIL

COUNCILLOR CONDUCT COMPLAINT FORM

Before you submit your complaint

You can only submit a complaint against a Councillor or a Co-opted Member of a Committee when they are acting in their capacity as a Councillor or a Co-opted Member. This includes whenever they conduct the business of the Council, or act, claim to act, or give the impression they are acting, in their official capacity as a representative of the Council.

We would like to see if there is a way to resolve your complaint informally before you submit a formal complaint.

Please therefore contact the Monitoring Officer at Medway Council. The Monitoring Officer is a senior officer with a legal background who can advise you and explain the complaints process to you. Contact details are:

Telephone: 01634 332133

Email: perry.holmes@medway.gov.uk

If, having spoken to the Monitoring Officer, you still wish to make a formal complaint please complete this form as fully as possible:

1. Please provide us with the name of the member(s) you believe have breached the Code of Conduct and the name of their Council:

Title	First name	Last name	Council or authority name

2. Please provide us with a summary of your complaint

3. Please provide us with your name and contact details

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

4. Please tell us which best describes you:

- Member of the public
- Councillor or a co-opted member
- Member of Parliament
- Council officer
- Other
(.....)

How will we deal with your complaint

You can find full details about how we deal with complaints about a Councillor in our Process [link] and the flowchart [link]

In summary there are four main stages to our process;

1. **Screening Assessments** - when the Councillor Conduct Committee will look at what you say has happened against a set of published criteria and decide whether it can be informally resolved or should be further investigated.
2. **Investigation** - where we will ask someone to investigate your complaint in more detail and produce a report. This is likely to be by correspondence
3. **Independent Review** - where we will ask someone unconnected to the Council called the Independent Person to review the information we have collected and to give us their independent opinion on how we should proceed.
4. **Conclusion** - where we will decide whether the **Member Councillor** has breached the Code of conduct and what action to take.

At each stage we will be looking to quickly and informally resolve your concern.

You can expect:

- An acknowledgement of your written complaint within 5 working days from the Monitoring Officer.
- That the Monitoring Officer will inform the subject Member 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.

Details we would like from you

Please explain in this section (and/or on separate sheets) in detail what the member has done that you believe breaches the Code of Conduct:

- You should be specific, wherever possible, about exactly what you are alleging the member said or did. For instance, instead of writing that the member insulted you, you should state what it was they said.
- 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 information setting out why you believe the Councillor or the Co-opted Member of a Committee was acting in their capacity as a Councillor or a Co-opted Member. Having considered your complaint, if it is decided that the Councillor or a Co-opted Member was acting in a personal capacity, then your complaint will not be pursued because this would not amount to a breach of the Code of Conduct.
- You should provide any other relevant background information.

Additional Help

Complaints must be submitted in writing which includes email. However, in line with the requirements of the Disability Discrimination Act 2000, we can make reasonable adjustments to assist you if you have a disability that prevents you from making your complaint-in writing.

We can also help if English is not your first language.

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

For advice about the process we will follow please contact:

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

01634 332133

perry.holmes@medway.gov.uk



Councillor Conduct Committee

Procedural Guidance for investigations about MemberCouncillor conduct allegations under the Localism Act 2011

Background

1. This guidance applies to those Councillor misconduct complaints where the Councillor Conduct Committee has requested an investigation after the Screening process.
2. It sets out the approach that will be taken when the Councillor Conduct Committee considers the Investigators report, the report of the Independent Person and any other relevant information.

Relevant people

3. The Committee – the Councillor Conduct Committee
4. The Investigator – an individual appointed by the Monitoring Officer to investigate the allegation
5. The Independent Person – someone not connected to the Council who has been appointed by the Council to provide independent oversight of conduct cases and whose views must be taken into account by the Committee before it makes a decision after an investigation
6. The Monitoring Officer – a senior officer who advises the Committee on the procedure and the law
7. The Complainant – the person making the complaint about a Councillor
8. The subject MemberCouncillor – the Councillor or co-opted Member about whom the complaint is made

Initial process

9. Once the Councillor Conduct Committee has decided to request an investigation, the Monitoring Officer will appoint a suitably qualified Investigator, normally outside of the Council. The Monitoring Officer will write to inform the subject MemberCouncillor, the Complainant and where applicable the Clerk of the relevant Parish Council. He will also write to the Independent Person.

Investigation

10. The Investigator will contact the subject MemberCouncillor, the Complainant and any witnesses and conduct an investigation to establish to the best of their knowledge and belief, the facts of the alleged misconduct. They will also be expected to say in their opinion whether the subject Councillor has breached the Code of Conduct. If a breach is found in the opinion of the Investigator they will be expected to confirm what action if any the Committee should take. The investigation will be expected to complete wherever possible within 3 months of instruction. Interviews of relevant people may take place in writing, over the telephone or in person.
11. In the unusual event that the Investigator finds evidence that suggests a criminal offence may have been committed she or he will contact the Monitoring Officer who will refer the matter to the police. The investigation will be suspended at that point until the police investigation concludes.
12. The subject MemberCouncillor and the Complainant should be asked to comment on a draft report from the Investigator which should indicate that it does not necessarily represent the Investigators final conclusions. Any comments should be included in a final report. The final report should include the Investigators conclusion on facts, breach and where relevant sanction.
13. Where the Investigator finds that the Code of Conduct has not been breached, the Committee will be invited by the Monitoring Officer to consider that together with the report of the Independent Person and to decide that whether the complaint process should not progress any further. They should give reasons for that decision.

Independent Person

14. The Independent Person will be invited to comment on the outcome of the investigation whether a breach has been found or not.

15. Where a breach has been found in the opinion of the Investigator and or the Independent Person, their report will be considered by the Committee before deciding on whether a breach of the Code of Conduct has happened.

Pre- Committee Meeting process

16. Once the Investigator's report and the Independent Person's report have been received by the Monitoring Officer, the Subject MemberCouncillor and the Complainant will be notified of the date that the Committee will be considering the reports and making their final decisions.
17. Both parties will be invited to comment on whether an informal resolution is possible. If that is the case then the Monitoring Officer should take all reasonable steps to facilitate the informal resolution and should notify the Committee at the next available meeting.
18. If that is not the case then the preparations for the meeting will continue. The complainant will be entitled to attend the meeting but will not normally be invited to contribute to the meeting as their complaint will have been fully investigated by this stage.
19. The subject MemberCouncillor will be asked to confirm whether they wish to attend and whether they object to any parts of the Investigator's report stipulating how they object and whether they wish to call witnesses. It will be at the discretion of the Monitoring Officer in consultation with the Chairman of the Committee where relevant to manage the pre-Committee hearing process. Witnesses who have not been previously notified to the Investigator will not normally be allowed accept in exceptional circumstances.

The Committee Meeting.

20. The consideration of the Investigator's report, the Independent Person's report and any other information will be conducted in accordance with the procedure outlined below. The meeting will not take evidence under oath and the questioning of people present will be through the Chairman of the Committee. The decision on the facts of the case will be on the balance of probabilities. The Committee will be expected to give reasons for its findings of fact, any decision that on whether or not the subject MemberCouncillor has breached the Code of Conduct and any decision as to sanction.
21. The Subject MemberCouncillor may be represented at their own expense by a barrister or solicitor. The consent of the Committee will be required for any other person to represent the Subject MemberCouncillor.

Meeting Procedure

22. The meeting to consider the Investigator's report will be closed to the press and public after resolution where any of the conditions in the Local Government Act 1972 Schedule 12A are met. The complainant and the subject MemberCouncillor will be entitled to stay in the meeting if this decision is made.
23. The Monitoring Officer or their nominee will support the Committee to make their decision. Any advice given by the Monitoring Officer will be reported to all those present in the meeting.
24. The Chairman or the Monitoring Officer will confirm who is present.
25. If the subject MemberCouncillor declines to attend or cannot attend for some specified reason the Committee will decide whether to proceed in absence giving reasons.
26. The Chairman or Monitoring Officer will outline the procedure.

Decision on the facts

27. The Investigating Officer if present or the Monitoring Officer will outline the Investigator's report and findings on the facts.
28. Through the Chairman the complainant, the subject MemberCouncillor or their representatives may ask questions of the Investigator if present on their findings on the facts.
29. The Committee may ask questions of the Investigator on their findings on the facts.
30. The complainant if present may address the Committee on the facts and call witnesses to the facts otherwise the Committee will consider the complainant's written comments. Witnesses who have not been previously notified to the Investigator and/or the Committee will not normally be allowed accept in exceptional circumstances.

31. The Committee may ask the complainant and any witnesses questions about the facts.
32. The subject MemberCouncillor or their representative if present may address the Committee on the facts and call witnesses to the facts otherwise the Committee will consider the subject Member'sCouncillors written comments. Witnesses who have not been previously notified to the Investigator and/or the Committee will not normally be allowed accept in exceptional circumstances.
33. The Committee may ask the subject MemberCouncillor and any witnesses questions about the facts.
34. The complainant and then the subject MemberCouncillor or their representative may make any final comments on the facts.
35. The Committee will retire to a separate room or ask everyone apart from the Committee Clerk to leave the room and make a decision on the facts of the case. They will return to the Committee room or invite everyone back and the Chairman will announce their decision with reasons.

Decision on breach

36. The subject MemberCouncillor or their representative will be invited to address the Committee on whether the facts as found give rise to a breach of the Code of Conduct.
37. The Committee will consider the report of the Investigator and the Independent Person as to breach and if present will ask them questions if necessary.
38. The Committee will retire to a separate room or ask everyone apart from the Democratic Services OfficerCommittee Clerk to leave the room and make a decision on the whether the facts of the case give rise to a breach of the Code of Conduct. They will return to the Committee room or invite everyone else back and the Chairman will announce their decision with reasons.

Decision on sanction

39. The subject ~~Member~~Councillor or their representative will be invited to address the Committee on what sanction if any the Committee should decide for the breach of the Code of Conduct.
40. The Committee will consider the views of the Investigator and of the Independent Person and if present ask them questions if necessary.
41. The Committee will retire to a separate room or ask everyone apart from the ~~Democratic Services Officer~~Committee Clerk to leave the room and make a decision on sanction for the breach of the Code of Conduct. They will return to the Committee room or invite everyone else back and the Chairman will announce their decision with reasons.

Guidance on sanctions

42. When deciding what sanction if any to impose the Committee should consider the following matters together with any relevant matters to ensure that the sanction is proportionate to the Subject ~~Member's~~Councillor's behaviour and will ensure compliance with the Code of Conduct in the future.
43. Features that could make the matter more serious or aggravating factors could include:
 - Dishonesty
 - Continued denial of the facts
 - Failure to heed officer advice
 - A pattern of behaviour which the Committee has ~~been dealt with~~considered before ~~by the Committee~~
 - Breach of trust
 - Likelihood of repetition
44. Features that could make the matter less serious or mitigating factors could include:

- An honestly held but mistaken view that the conduct was not a breach of the Code
- A member's previous good record
- Recognition of wrong doing and attempts at reparation

45. the following are the possible sanctions that the Committee could impose:

- Censure of the subject MemberCouncillor either by the Committee or a recommendation that the censure be made by full Council at the next meeting.
- Recommendation to the subject Member'sCouncillor's Group Leader that she/he be removed from any or all Committees.
- Recommendation to the Leader of the Council that she/he be removed from the Cabinet or removed from particular Portfolio Holder responsibilities.
- Recommendation that the subject MemberCouncillor write a letter of apology to the Complainant.
- Instruction to the Monitoring Officer that training in the Code of Conduct is arranged for the subject MemberCouncillor.
- Recommendation to full Council or to the relevant Parish Council that the MemberCouncillor be removed from all outside bodies she/he has been appointed to by the Council.
- Recommendation to the Chief Executive or the relevant Parish Council via their Clerk that facilities such as access to premises, computer, email or other support be withdrawn for a defined period but not such as to prevent the MemberCouncillor from attending any meetings to which they are entitled to attend as a Councillor.
- Recommendation to the Chief Executive or the relevant Parish Council via their Clerk that all contact with the subject MemberCouncillor be through named officers.

After the meeting

46. The decision of the Committee will be included in the minutes of the meeting. Where the decision is that there was no breach of the Code of Conduct, the subject ~~Member Councillor~~ and the Complainant will not normally be identified.
47. Where the decision is that there was a breach the ~~Member Councillor~~ will be identified.
48. The Complainant will only be identified where they~~re~~ have expressly agreed to this.

Appeal

49. There is no right of appeal by either party against a decision of the Monitoring Officer or of the recommendations of the Councillor Conduct Committee.
50. There is a right for any complainant, who is a member of the public, to refer the matter to the Local Government Ombudsman (LGO). The LGO does not have any powers to overturn the decision of the committee but may ask the committee to reconsider the matter or change its procedures if there is evidence of maladministration

~~December 2014~~ May 2017

**PART 2 - MEDWAY COUNCIL PLANNING CODE OF GOOD PRACTICE
(incorporating the Site Visit Protocol)**

1. Introduction

1.1 This code of good practice (the Planning Code) gives advice to Councillors who:

- are members of a Planning Committee (the Committee);
- sit in on a meeting of the Committee as a substitute member;
- attend the Committee (whether or not they take part in a debate in the Committee on a planning application or other development management matter);
- are involved outside the Committee on a planning application or other development management matter – including informal occasions such as meetings with officers or public and consultative meetings;
- attend planning application site visits.

1.2 A key aim of the Planning Code is to ensure that in the planning process there are no grounds for suggesting that a decision has been biased, partial or is not well founded in any way. Councillors must make planning decisions openly, impartially with sound judgment and for justifiable reasons.

1.3 This is particularly important, as planning matters will be subject to close scrutiny both because large sums of money will be at stake for applicants for planning permission and because the quality of the built and natural environment in which local residents and the wider community live and work may be irrevocably affected.

1.4 The Human Rights Act 1998 has implications for the planning system and has created enhanced requirements for procedural fairness, transparency and accountability in determining planning applications.

1.5 The Planning Code is intended to minimise the prospect of legal or other challenge to planning decisions. However, non-compliance without good reason could be taken into account in investigations into a breach of the Members' Code, possible maladministration or may have implications for the standing of Councillors and the Council as a whole.

2. Relationship with the members' code of conduct

2.1 The members' code of conduct ("the Members' Code") must always be complied with and the rules in that code must be applied before considering the Planning Code.

2.2 The Planning Code is not intended to form a part of the adopted Members' Code but is a separate document, which is both supportive of the Members' Code and the source of expanded guidance in the particular area of planning.

2.3 To distinguish it from the Members' Code, this document is referred to as the Planning Code.

3. Disclosable Pecuniary Interests

3.1 The Localism Act 2011 places requirements on Councillors to notify the Monitoring Officer of or to disclose at committee Disclosable Pecuniary Interests (DPI) and prohibits participation in the business of the Council where a Councillor has such an interest. The current list of DPIs is set out in Schedule One ~~the list attached~~ to the Members' Code.

3.2 The requirement to notify the Monitoring Officer of a DPI applies not only to a Councillor's own interests but also to those of the Councillor's husband/wife/civil partner or a person with whom the Councillor is living as husband/wife or as if they were civil partners, if the Councillor is aware that that person has the interest. In this Planning Code such a person is referred to as a "relevant person".

3.3 Failure to so notify/disclose a DPI in the circumstances required by the Localism Act 2011 is a criminal offence. Therefore the requirements as to notification, disclosure and participation must be followed scrupulously and Councillors should review their situation regularly. Whilst advice can be sought from the Monitoring Officer, ultimate responsibility for compliance rests with individual Councillors.

3.4 A Councillor may have a DPI in relation to a planning application in a number of circumstances affecting them or a relevant person. Examples include, but are not limited to:

- An application for development of a property owned or leased by the Councillor or a relevant person;
- An application for development of land owned by the Councillor's employer or a relevant person's employer;
- An application for development of a property which the Councillor or a relevant person occupy by way of licence.

3.5 Unless a Councillor has received a dispensation from Medway Council, he or she must not participate in a discussion or vote on any application in which he or she or a relevant person has a DPI.

3.6 The Members' Code of Conduct ~~Localism Act 2011 does not require~~ requires the disclosure at a meeting of a DPI even if the interest already appears on the register. Councillors need to be cautious about pending notifications (where the Monitoring Officer has been notified but the register has not yet been updated). There is an ongoing legal obligation to disclose at meetings until the register has been updated and therefore, ~~in cases of doubt~~ the Councillor should disclose at the meeting. In any event, Councillors may

voluntarily declare an interest at a meeting, even where there is no legal obligation to do so.

- 3.7 The Members' Code requires Councillors to withdraw from the room at a meeting during a discussion about an issue in which they have a DPI. Failure to comply with this requirement will not be a criminal offence but will be a breach of the Members' Code and could potentially taint a planning decision and leave it susceptible to a challenge by way of judicial review.
- 3.8 There are no longer any exemptions allowing Councillors who have a DPI to speak where a member of the public would be allowed to speak. Therefore where a Councillor has a DPI (either him/herself or through a relevant person) he or she may not participate in the debate or vote on a planning application and must withdraw from the room. This applies whether or not the Councillor is wishing to speak as a member of the committee, as a ward councillor or as a private individual.
- 3.9 Therefore if a Councillor has a DPI in a matter being considered at a Committee (either his or her own interest or through an interest of a relevant person) he or she **must**

- Declare the interest verbally at the meeting as soon as he or she becomes aware of it, ~~if it is not already registered on the Register of Member Interests~~
- If it is declared at the meeting under the requirement above, ensure that the Monitoring Officer is notified of the interest within 28 days of the meeting, for purposes of registration on the Register of Member Interests
- Withdraw from the room and not participate in or give the appearance of participating in the debate or the vote
- Not be present in the room to represent ward or objectors/supporters views

~~and a Councillor **may**~~

- ~~Declare the interest verbally at the meeting even if it already appears on the Register of Member Interest~~

4. **Predetermination, ~~and~~ Bias and Other Significant Interests**

- 4.1 Councillors must also be aware of and act within the rules on predetermination and bias. Avoidance of bias or predetermination is a principle of natural justice which has evolved through the courts, although s25 of the Localism Act 2011 is also relevant. Even if a Councillor does not have a DPI or is not acting in breach of the Members' Code he or she may cause a decision to be invalid if he or she participates while predetermined or biased. The rules regarding predetermination and bias are likely to be more strictly applied where the Council is making "quasi-judicial" decisions, such as the determination of a planning application, than in the case of other decisions to be made by the Council.

- 4.2 The basic legal position is that a Councillor should not take part in making a decision on a planning matter if he or she is **biased** or has **predetermined** the matter. Councillors should bring an unbiased, properly directed mind to the consideration of any matters before them at Committee. This does not mean that Councillors are not entitled to have and to express opinions about general planning matters, or planning cases. However, they must approach, and must be seen to approach, matters before them with an open mind.
- 4.3 In this respect a distinction is to be drawn between those Councillors who are making the decision (i.e. speaking and voting as part of the committee) and those Councillors seeking merely to influence the decision (i.e. making representations as a Ward Councillor). The prohibition in respect of predetermination or bias only affects those actually making the decision. A Councillor who is not a member of the Planning Committee Councillor who has predetermined or who is biased may still speak as a Ward Councillor ~~(provided that he or she does not also have a DPI~~ or)an Other Significant Interest in the matter.
- 4.4 A Councillor will have an OSI in a matter being considered at a meeting where their interest is closely aligned to the business of the agenda item and where the business affects the financial position or well being of the following to a greater extent than most inhabitants of the area affected by the decision:
- i) the Councillor;
 - ii) a member of the Councillor's family or friends or any person with whom the Councillor has a close association;
 - iii) any person or body from whom a Councillor has accepted or received any gifts or hospitality as specified in Schedule Two to the Member's Code;
 - iv) any outside body or group specified in Schedule Two of the Members' Code of which the Councillor is a member or in a position of general control or management (as relevant).
- And where a member of the public with knowledge of the relevant facts would reasonably think that the interest is so significant that it would be likely to prejudice the Councillor's judgement of the public interest.
- 4.5 Unless a dispensation has been granted a Councillor who has an Other Significant Interest must disclose this at the meeting, not take part in the discussion or vote and must leave the meeting room.

Predetermination

- 4.6 The law also makes a distinction between *predetermination*, which rules out participation in decision-making and *pre disposition*, which does not.
- 4.75 A Councillor is entitled to have and to express views on local matters, both general planning matters and more specific applications. These views may

indicate that a Councillor has a predisposition towards a particular policy or viewpoint. This is perfectly acceptable and a Councillor with a predisposition may take part in decision-making.

- | 4.86 A predisposition will move on to becoming predetermination if, in relation to any matter before the Committee, a Councillor has taken a stance which indicates that he or she has finally closed his or her mind on the matter and that nothing that he or she hears at Committee will alter his or her position.
- | 4.97 Section 25 of the Localism Act 2011 expressly provides that a Councillor shall not be taken to have had a closed mind just because he or she has previously done anything that directly or indirectly indicated what view he or she took, or would or might take, in relation to a matter. Therefore a Councillor will not have predetermined merely because he or she has made statements about a planning application in the past. However, this does not mean that a Councillor is free to say or do *anything* and still participate in the debate and vote. If by his or her actions and words the Councillor makes it clear that he or she will be voting a certain way no matter what information is presented at the Committee, then he or she will have predetermined and should not take part in the decision making.
- | 4.108 There is acceptance that a Councillor may legitimately consider matters in several capacities as different factors may apply to different decisions. Where premises require both planning permission and a licence, Councillors may be asked to sit on both the Planning Committee and a Licensing Hearing Panel. While the statutory regimes in such cases are different, often the factors to be taken into account can be similar. In these circumstances, Councillors should carefully consider whether anything they have done or said in making the earlier decision would demonstrate a pre-determination of the second decision. If that is the case, the Councillor should not take part in the decision making at the second committee.

Bias

- | 4.119 A Councillor should not be party to decisions in which he is actually biased or gives the appearance of being biased, to the reasonable observer. The test for the appearance of bias is whether a fair minded and informed observer, having considered the facts, would conclude that there was a possibility that the decision maker was biased.
- | 4.120 Bias may arise by virtue of a Councillor being closely connected with a person who has a vested interest in the application – either the applicant or an objector. This may result from a personal connection, such as an applicant being a relative or friend, or result from the Councillor espousing a particular viewpoint (e.g. by being part of a lobby group). The role of the Committee is to consider applications in accordance with the legislation and to balance the interests of persons with competing views and this may not be possible where a Councillor is closely connected with a particular party.
- | 4.134 In addition, circumstances which raise the possibility of bias may also lead to an accusation of a breach of the Members' Code, as the Members' Code

states that Councillors 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 themselves, their family, friends or close associates. Where this might occur, Councillors should not take part in the decision-making

Specific areas of guidance

4.142 *Membership of a Parish Council*

A Councillor who is also a member of a Parish Council which has been consulted on a planning application is not automatically debarred from participating in a planning decision at Medway even where he or she may have sat on the relevant parish planning committee. However, the following key principles should be observed if a Councillor is to participate in the decision-making at Medway:

- Careful consideration must be given as to whether a reasonable and informed member of the public would believe that the Councillor was coming to the decision at Medway without a fixed view. Strong opposition or support to an application at the parish meeting would indicate that a Councillor had predetermined and therefore debar that Councillor from voting at the Committee in Medway
- If speaking at the Parish Meeting the Councillor should make it clear that what he or she is saying is based on the limited information available at that stage and that the Councillor will review the matter at the Medway meeting.

If a planning application significantly affects the Parish Council (e.g. the Parish Council is the applicant or the application affects land owned by the Parish Council), it is likely that a fair minded and informed observer might consider the Councillor to be biased as a result of his membership of the Parish Council and therefore in those circumstances a Parish Councillor should not take part in the debate or vote on such an application.

4.153 *Lobbying by Councillors*

4.153.1 Councillors can, of course, lobby and campaign on particular developments, but they should recognise that this may remove them from the decision making process.

4.153.2 If a Councillor leads, represents or is a member of a group whose primary purpose is to lobby to promote or oppose a particular development, he or she will be considered to have predetermined an application relating to that development.

4.153.3 The position in 4.13.2 is distinct from membership of general interest groups, which reflect a Councillor's area of interest, e.g. the RSPB, English Heritage or the Ramblers Association. If that organisation has made representations on an application, but the Councillor has not been involved in

preparing those representations, he or she will not have predetermined merely due to that membership.

| 4.153.4 Councillors should not excessively lobby other Councillors regarding their views on planning applications, nor should they, outside of the Committee, try to persuade other Councillors how to vote.

| 4.153.5 Councillors should not decide or discuss how to vote on planning applications at political group meetings or lobby other Councillors to do so. Political group meetings should never dictate how Councillors vote on planning applications.

| 4.164 ***Representations from Councillors at the consultation stage***

Councillors who wish to take part in the debate and vote at a Committee should refrain from making representations as part of the consultation process, as this may imply predetermination. Councillors may, however, exercise their rights to refer an application to the Committee and then take part in the debate and vote at the Committee. In making such a referral Councillors must inform the Head of Planning in writing of the planning reasons for referral to committee (note just because they have been asked to refer to committee by a particular individual or group is not a valid planning reason for referral), and should carefully consider how they express those reasons.

| 4.175 ***Lobbying of Councillors***

| 4.175.1 Lobbying is a normal and perfectly proper part of the political process. Those who may be promoting or affected by a planning decision will often be seeking to influence it through an approach to their elected ward Councillor, another Councillor or a member of the Committee. However lobbying can, where a Councillor is a member of the Committee which will determine the application, lead to the integrity and impartiality of a Councillor being called into question. This can in turn affect the validity of a planning decision.

| 4.175.2 A Councillor who wishes to participate in the determination of a planning application should explain to persons lobbying or attempting to lobby that whilst they can listen to what is said it would prejudice their impartiality and ability to participate in the decision if they give a firm statement of how they intend to vote or express strong sympathies with a point of view in advance of the meeting. For the avoidance of doubt a Councillor will not have predetermined

- by just listening to viewpoints from residents or interested parties;
- by making comments which fall short of prejudging the issue;
- by seeking information through appropriate channels;
- by acting as a vehicle for the expression of views as a ward Councillor providing he or she has not committed to vote in accordance with those views or that he or she is not acting as an advocate for a particular viewpoint.

4.175.3 When a Councillor participates in a making a planning decision, his or her overriding duty is to the community as a whole and not just people in his or her ward. As decisions need to be taken impartially a Councillor should not improperly favour or appear to improperly favour any person, company, group or locality. To do so is likely to be a breach of the Members' Code.

4.175.4 In addition to the requirement set out in the Members' Code to declare any gift or hospitality with an estimated value of at least £100, Councillors should not accept gifts or hospitality from any person involved in or affected by a planning application. It is advisable to let the Monitoring Officer know if you feel you have been exposed to excessive lobbying or offers of gifts or hospitality linked to a planning application.

4.175.5 It is good practice for Councillors to

- forward copies of lobbying correspondence to the Development Manager;
- advise the Development Manager of any offers of planning gain or constraint on development made to them;

4.186 Contact with applicants, developers and objectors

4.186.1 Councillors should refer those who approach for assistance on planning, procedural or technical matters to relevant officers.

4.186.2 As community leaders and local representatives Councillors will want to be involved in relevant public meetings, pre-application discussion and policy production. However, this may create some risks for councillors who are members of the Committee, and for the integrity of the decision making process. Councillors will be able to be involved provided that they adopt the following precautions.

- Councillors wishing to take part in the debate and vote at Committee should avoid agreeing to formal or informal meetings with or presentations by applicants, developers or groups of objectors, unless these are organised by officers.
- At any such organised meetings or presentations councillors can ask questions to seek clarification and make comments/raise concerns but should not go so far as to indicate how they would vote were the proposal to come to Committee.
- It must be remembered that the presentation is not a part of the formal planning process. . All parties will be advised the meeting is not a decision-making meeting.
- A presentation is a form of lobbying and Councillors who will be determining the application should not express views on how they will vote, although is perfectly acceptable to ask questions and give general and preliminary feedback.
- If a Councillor is genuinely unable to avoid contact from an applicant or objector outside of a meeting or presentation organised by officers he or she should inform the applicant/objector that he or she will not be able to give a view before consideration at the Committee and should keep a record of what was discussed.

4.197 Policy formulation by the Council

4.197.1 The role of the Planning Committee is to determine applications, in line with the relevant statutory requirements (e.g. s38 of the Planning & Compulsory Purchase Act 2004 in relation to planning applications). It is the role of Cabinet and full Council to develop planning policy. While the Planning Committee does not have a consultation role in terms of emerging policy within its terms of reference, members of the Committee may sit on other committees (such as the Regeneration, Culture and Environment Overview & Scrutiny Committee or the Development Plans Cabinet Advisory Group)) which do have such a consultative role. In addition, there are all member briefings on planning policies, where Councillors can express views.

4.197.2 Councillors may take part in both policy formulation and determining planning applications. However, when attending meetings on policy formation Councillors should follow the guidance on pre-determination if they wish to take part in subsequent decisions on planning applications. This will be particularly relevant where the policy being formulated is site specific where the policy may address the desirability of certain types of development on a particular site.

4.2018 Site Visits

4.2018.1 Site visits can be a valuable part of the planning process. However they should normally only be requested where there are definite benefits, for example:

- Particular site factors are significant in terms of the weight attached to them relative to other factors or the difficulty of their assessment in the absence of a site inspection.
- There are significant policy or precedent implications and specific site factors need to be carefully addressed.

4.2018.2 No hospitality should be accepted at site visits.

4.2018.3 Councillors should endeavour to keep together as a group and not engage individually in discussions with any applicants, objectors or third parties who may be present.

4.2018.4 Councillors who wish to take part in the decision-making at Committee should not express views on the application to anyone present.

4.2018.5 It is acceptable to ask officers at the site visit questions or to seek clarification on matters relevant to the site inspection.

4.2018.6 The site visit should be properly recorded in terms of which councillors attended and a summary of the visit and reported back to the Committee.

4.2018.7 Councillors who wish to determine an application should not enter a site subject to a planning proposal other than as part of an official site visit even in response to an invitation.

4.2048.8 A site visit is not a formal meeting of the Committee and therefore a Councillor with a Disclosable Pecuniary Interest [or Other Significant Interest](#) is not debarred from attending. However, such a Councillor must take care to ensure that (i) nothing he or she does at the site visit breaches the Members' Code and (ii) he or she does not imply that he or she will be part of the decision making process at Committee.

4.2048.9 All Councillors should remember the purpose of the site visit and should refrain from making comments not relevant to the application to be considered by the Committee. The purpose of a site visit is to gather information material to the planning application, it is not a general public meeting and Councillors should not treat it as such.

4.2048.10 The Chairman of the site visit may ask a Councillor to leave the site visit if he or she is not complying with this Planning Code or the Site Visit Protocol.

4.2048.11 The procedure for site visits is set out in the protocol for site visits attached as an appendix to this Planning Code and all Councillors shall comply with that protocol.

4.2149 **Contact with Officers**

4.2149.1 General guidance is given in the protocol on member/employee relations in the constitution and that is not repeated here.

4.2149.2 Councillors should not put pressure on officers to put forward a particular recommendation. However this does not prevent a Councillor asking questions or submitting views to a relevant officer.

4.2149.3 Officers must act in accordance with the employee code of conduct and any relevant professional codes of conduct, for example the Royal Town Planning Institute's code of professional conduct. As a result planning officers views will be presented on the basis of their overriding professional obligation of professional independence which may on occasion be at odds with the views, opinions or decisions of the Committee or its members.

4.220 **Planning applications by Councillors and officers; and Council development**

4.210.1 Proposals to the Council by serving and former Councillors and officers and members of their family or persons with whom they have a close association can easily give rise to suspicions of impropriety, if not handled transparently. So indeed can proposals for a Council's own development. Proposals can take the form of either planning applications or planning policy proposals.

4.210.2 Councillors (and officers involved in the planning process) who submit proposals should notify the Head of Planning in writing of the proposal and play no part in its processing or determination and avoid contact, whether

direct or indirect with members of the Committee concerning the application. Failure by a Councillor to comply with these principles could be a breach of the Members' Code.

| 4.210.3 It is perfectly legitimate for such proposals to be submitted. However, it is vital to ensure that they are handled in such a way that gives no grounds for accusations of favouritism. Councillors should carefully consider using agents to submit and take forward their own applications.

| 4.210.4 Serving Councillors and officers should avoid acting as agents for people pursuing a planning matter and where they do should play no part in the decision making process for that proposal.

| 4.210.5 All proposals submitted by Councillors or by officers involved in the Development Management process are required to be decided by the Committee and not dealt with by officers under delegated powers. Councillors considering an application must of course consider whether the nature of any relationship with the Councillor submitting the planning application could lead to an accusation of bias. Mere membership of the same political group is unlikely to lead to an appearance of bias, but a close friendship could.

| 4.234 Development proposed by the council or a council owned company

4.21.1 Planning legislation allows the Council to submit and determine proposals for development that it proposes to carry out itself. Council owned companies also submit proposals that are decided by the council.

4.21.2 Proposals submitted by the Council or a Council owned company shall be considered in the same way as those by a private developer.

4.21.3 Members of the Planning Committee who sit on the board of a Council owned company which has submitted a planning proposal shall declare a non-registerable interest and take no part in the discussion and determination of that proposal.

4.21.4 Officers who are directly involved in the preparation of development proposals shall not determine planning applications in respect of such proposals.

5. Decision making

5.1 Councillors making planning decisions must

- come to meetings with an open mind and demonstrate they are open minded;
- comply with section s38 Planning & Compulsory Purchase Act 2004 and make decisions in accordance with the development plan unless material considerations indicate otherwise;
- not vote or take part in the discussions at Committee on a proposal unless present to hear the entire debate including any officer introduction/presentation;

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- come to a decision only after due consideration of all information reasonably required upon which to base such a decision;
- request further information if it is felt there is insufficient information before the Committee to reach a decision;
- where proposing, seconding or supporting a decision contrary to officer recommendation, identify the planning reasons behind the decision before the vote is taken which may have to be justified in the event of an appeal or other challenge (and in the event of a proposal to grant planning permission contrary to officer recommendation propose relevant conditions and reasons for conditions to be attached to the planning permission). If Councillors are unable to do this immediately, they should request an adjournment or a deferral in order to seek advice and/or formulate the reasons/conditions.

5.2 The Planning Committee has agreed that where the statutory consultation period for a planning application has expired prior to the date of the Committee at which the application is to be considered, no representations shall be accepted for consideration by the Committee unless they are received within the Planning Service before 12 noon on the day before the date of the Committee at which the application is to be considered.

6. Training

Councillors should not participate in decision-making meetings dealing with planning matters unless they have attended any training prescribed by the Monitoring Officer.

PROTOCOL FOR MEMBER SITE VISITS	OP800	Issue no 009
	Date :	05/02/15

1.	<p><u>Purpose</u></p> <p>To ensure consistent and appropriate procedures are followed in the conduct of Member site visits arising as part of the consideration of a planning application, or other development by the Planning Committee.</p>							
2.	<p><u>Scope</u></p> <p>The conduct of any site visit to be undertaken by Members of the Planning Committee as part of the consideration leading to the determination made under the Planning Acts including the determination of any application for planning permission, Listed Building Consent, confirmation of a Tree Preservation Order etc. and the expediency of taking enforcement action.</p>							
3.	<p><u>Responsibilities</u></p> <p>Overall responsibility lies with the Head of Planning (HoP). Specific duties are carried out by Planning Managers (PM), Senior Planners (SP), Case Officers (CO), Democratic Services Officers (DSO) and the Democratic Services Support Officers (DSSO) in Democratic Services.</p>							
4.	<p><u>Procedure</u></p>							
4.1	<p>The Planning Committee may resolve to defer a decision on a planning application or other planning matter in order that a site visit (SV) can take place to assist the consideration. It should be noted that site visits should normally only be agreed where:</p> <ul style="list-style-type: none"> • Particular site factors are significant in terms of the weight attached to them relative to other factors or the difficulty of their assessment in the absence of a site inspection and/or • There are significant policy or precedent implications and specific site factors need to be carefully addressed. <p>Members should note that the site visits are for fact-finding reasons to assist Member deliberations and are not for discussing the merits of the proposal, which should only be done at Committee. The purpose of a site visit is to gather information material to the planning application, it is not a general public meeting and Members should not treat it as such. Members should concentrate on the aspects of the application in question which required the site visit.</p> <p>The HoP or officer attending the Committee and DSO should note the reasons for the deferral for the minutes.</p>	<table border="1"> <thead> <tr> <th>Action</th> <th>Doc</th> </tr> </thead> <tbody> <tr> <td></td> <td>PC minutes</td> </tr> <tr> <td>HoP/ DSO</td> <td></td> </tr> </tbody> </table>	Action	Doc		PC minutes	HoP/ DSO	
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	PC minutes							
HoP/ DSO								

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PROTOCOL FOR MEMBER SITE VISITS	OP800	Issue no 009
	Date :	05/02/15

	<u>Procedure</u>	Action	Doc
4.7	<p>The SV will be attended by the CO, PM or HoP who should ensure that he/she takes the file, a scale rule, tape measure, mobile phone, megaphone and any necessary equipment needed to explain the proposal and is appropriately dressed.</p> <p>The CO/PM/HoP should ensure that he/she arrives at the site in good time. If it is the first SV of the day he/she should arrive 10 minutes before the official start time to be able to deal with any concerns from members of the public or non-Council attendees.</p>	CO/ PM/ HoP	
4.8	<p>The site visit will be conducted by the Chairman of the Planning Committee or their nominated deputy but the CO/PM/HoP will be there to advise on procedures and protocol. The visit will follow the following format:</p> <ul style="list-style-type: none"> • The Chairman will call the session to order and explain the reason for the visit and the procedure to be followed making it clear that no decision will be taken and the date of the meeting where the application will be re-considered. • The CO/PM/HoP will explain the application proposal or the development under consideration; summarise the representations received; identify the planning issues and how the officer recommendation has been reached. • The Chairman will ask the applicant/agent if they wish to add any points; ask if any members of the public/other attendees wish to comment or ask questions, ask Committee Members if they wish to ask questions or seek points of clarification, then questions will be fielded either by the Chairman, the CO/PM/HoP or the applicant/agent – to be decided by the Chairman • The Chairman will close that part of the visit, confirming that no decision will be taken and the date of the meeting when the application will be next considered but that no further comments will be heard at that time. <p>Members of the Committee will look at the site visiting those parts deemed necessary including any vantage points from neighbouring property.</p> <p>When the Chairman considers that the time is appropriate he/she will announce that the Site Visit is formally closed.</p>	CO/ PM/ HoP	

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PROTOCOL FOR MEMBER SITE VISITS	OP800	Issue no 009
	Date :	05/02/15

	<u>Procedure</u>	Action	Doc
4.9	<p>A site visit is not a formal meeting of the Committee and therefore a Councillor with a Disclosable Pecuniary Interest or Other Significant Interest is not debarred from attending. However, such a Councillor must take care to ensure that (i) nothing he or she does at the site visit breaches the Members' Code and (ii) he or she does not imply that he or she will be part of the decision making process at Committee.</p> <p>See Point 3 of the Members Code of Practice via the following link : http://www.medway.gov.uk/pdf/5.02%20-%20Members%20planning%20code%20of%20good%20practice21%20August%202013.pdf</p>	CO	
	<p>During the SV Members must stay together as a group to ensure that there is no opportunity for individual lobbying and all are able to consider the development on the basis of the same information. If there are any further questions they should be addressed to the Chairman so that they can be answered in a proper manner so that all can hear.</p> <p>Members must be aware that they have no powers of entry and can only enter land or a building at the agreement of the owner/occupier. Members of the public have no rights to accompany the Councillors visiting the site and likewise may only enter land or a building with the permission of the owner/occupant.</p> <p>The Chairman of the SV may request a Councillor to leave the SV if he or she does not comply with this protocol and/or the Planning Code.</p> <p>The Chairman may call a halt to any SV if there is unruly or abusive behaviour on the part of anyone present.</p>		
4.10	The CO/PM/HoP will make a note of the persons attending the SV. This note will be added to the Supplementary Agenda advice sheet for the next Committee meeting together with a brief summary of the issues raised at the SV.	CO/ PM/ HoP	Supp. Agenda
4.11	The CO/PM/HoP will send or email the attendance sheet to DSSO.	CO/ PM/ HoP	

PART 7 - MEMBERS LICENSING CODE OF GOOD PRACTICE

1. Introduction

- 1.1 This code of good practice (the Licensing Code) gives advice to Councillors who:
- are members of the Licensing and Safety Committee and who sit on hearing panels or sub committees
 - wish to attend or address the Committee, a sub committee or a hearing panel on any licensing issue.
 - are involved outside the Committee on licensing applications or other licensing matters – including informal occasions such as meetings with officers or public and consultative meetings.
 - are involved in applications for licences under the Licensing Act 2003, the Gambling Act 2005 or any other licensing legislation.
- 1.2 A key aim of the Licensing Code is to ensure that there are no grounds for suggesting that a licensing decision has been biased, partial or is not well founded in any way. Councillors must make these decisions openly, impartially with sound judgement and for justifiable reasons.
- 1.3 This is particularly important, as licensing applications will be subject to close scrutiny both because applicants may be seeking to maximise the business potential of their premises and because the quality of the environment in which local residents and the wider community live and work may be detrimentally affected through the grant of inappropriate licences.
- 1.4 The Human Rights Act 1998 has implications for the licensing system and has created enhanced requirements for procedural fairness, transparency and accountability in decision making.
- 1.5 This Licensing Code is intended to minimise the prospect of legal or other challenge to decisions. Non-compliance without good reason could be taken into account in investigations into a breach of the Members' Code or possible maladministration or may have implications for the standing of Councillors and the Council as a whole.
- 1.6 Most licensing applications heard by Councillors will be determined by a hearing panel or by a sub-committee of the main Licensing and Safety Committee. It should be borne in mind that, given the small numbers of Councillors on such hearing panels or sub-committee, the scrutiny of any interests held by Councillors making those decisions will be greater.

2. Relationship with the Members' code of conduct

- 2.1 The Members' code of conduct ("the Members' Code") must always be complied with and the rules in that code must be applied before considering the Licensing Code.
- 2.2 The Licensing Code is not intended to form a part of the adopted Members' Code but is a separate document, which is both supportive of the Members' Code and the source of expanded guidance in the particular area of licensing.
- 2.3 To distinguish it from the Members' Code, this document is referred to as the Licensing Code.

3. Disclosable Pecuniary Interests

- 3.1 The Localism Act 2011 places requirements on Councillors to notify the Monitoring Officer of or to disclose at committee Disclosable Pecuniary Interests (DPI) and prohibits participation in the business of the Council where a Councillor has such an interest. The current list of DPIs is set out in [Schedule One](#) ~~the list attached~~ to the Members' Code.
- 3.2 The requirement to notify the Monitoring Officer of a DPI applies not only to a Councillor's own interests but also to those of the Councillor's husband/wife/civil partner or a person with whom the Councillor is living as husband/wife or as if they were civil partners, if the Councillor is aware that that person has the interest. In this Licensing Code such a person is referred to as a "relevant person".
- 3.3 Failure to so notify/disclose a DPI in the circumstances required by the Localism Act 2011 is a criminal offence. Therefore the requirements as to notification, disclosure and participation must be followed scrupulously and Councillors should review their situation regularly. Whilst advice can be sought from the Monitoring Officer, ultimate responsibility for compliance rests with individual Councillors.
- 3.4 A Councillor may have a DPI in relation to a licensing matter in a number of circumstances affecting them or a relevant person. Examples include, but are not limited to;
 - An application for a premises licence for premises owned or leased by the Councillor or a relevant person;
 - An application for a premises licence for a premises close to property owned by the Councillor or a relevant person, in particular where the grant of a licence could affect the Councillor's pecuniary interest in that property (e.g. by affecting the value of the property);
 - An application for a review of a premises licence made by the Councillor's or a relevant person's employer.

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- 3.5 Unless a Councillor has received a dispensation from Medway Council, he or she must not participate in a discussion or vote on any application in which he or she or a relevant person has a DPI.
- 3.6 The Members' Code of Conduct requires~~Localism Act 2011 does not require~~ the disclosure at a meeting of a DPI even if the interest already appears on the register. Councillors need to be cautious about pending notifications (where the Monitoring Officer has been notified but the register has not yet been updated). There is an ongoing legal obligation to disclose at meetings until the register has been updated and therefore, ~~in cases of doubt~~ the Councillor should disclose at the meeting. In any event, Councillors may voluntarily declare a DPI or other interest at a meeting, even where there is no legal obligation to do so.
- 3.7 The Members' Code requires Councillors to withdraw from the room at a meeting during a discussion and vote upon an issue in which they have a DPI. Failure to comply with this requirement will not be a criminal offence but will be a breach of the Members' Code.
- 3.8 Where a Councillor who is due to sit on a hearing panel or sub-committee has a DPI or an Other Significant Interest (OSI) in a matter to be determined at that hearing panel or sub-committee, he or she should notify the Democratic Services team as soon as he or she receives the committee papers so that a substitute member can be organised. This is particularly important as such sub-committees and hearing panels have a small membership.
- 3.9 There are no longer any exemptions allowing Councillors who have a DPI or OSI to speak where a member of the public would be allowed to speak. Therefore where a Councillor has a DPI or OSI (either him/herself or through a relevant person) he or she may not participate in the debate or vote on a licensing matter and must withdraw from the room. This applies whether or not the Councillor is wishing to speak as a member of the committee, as a ward councillor or as a private individual (there are additional restrictions on speaking in a Licensing Hearing Panel which are set out in paragraphs 5.4 and 5.5 below). Where a Councillor who wishes to make representations has a DPI or an OSI in an application to be considered at a hearing panel or a sub-committee he or she may appoint a representative to attend on his behalf. If a Councillor with a DPI or an OSI wishes to attend personally in order to make representations, he or she must obtain a dispensation prior to the meeting.
- 3.10 Therefore if a Councillor has a DPI or and OSI in a matter being considered at a Committee, Sub-Committee or Hearing Panel (either his or her own interest or through an interest of a relevant person) he or she **must**
- Declare the interest verbally at the meeting as soon as he or she becomes aware of it, ~~if it is not already registered on the Register of Member Interests~~
 - If it is declared at the meeting under the requirement above, ensure that the Monitoring Officer is notified of the interest within 28 days of the meeting,

for purposes of registration on the Register of Member Interests [as applicable](#)

- Withdraw from the room and not participate in or give the appearance of participating in the debate or the vote
- Not be present in the room to represent ward/ objectors/ supporters/ personal views

~~and a Councillor *may*~~

- ~~• Declare the interest verbally at the meeting even if it already appears on the Register of Member Interest~~

4. Predetermination, ~~and Bias~~ and Other Significant Interests

4.1 Councillors must also be aware of and act within the rules on predetermination and bias. Avoidance of bias or predetermination is a principle of natural justice which has evolved through the courts, although s25 of the Localism Act 2011 is also relevant. Even if a Councillor does not have a DPI or is not acting in breach of the Members' Code he or she may cause a decision to be invalid if he or she participates while predetermined or biased. The rules regarding predetermination and bias are likely to be more strictly applied where the Council is making "quasi-judicial" decisions, such as the determination of a licensing application, than in the case of other decisions to be made by the Council.

4.2 The basic legal position is that a Councillor should not take part in making a decision on a licensing matter if he or she is **biased** or has **predetermined** the matter. Councillors should bring an unbiased, properly directed mind to the consideration of any matters before them at Committee. This does not mean that Councillors are not entitled to have and to express opinions about general licensing matters, or licensing cases. However, they must approach, and must be seen to approach, matters before them with an open mind.

4.32 In this respect a distinction is to be drawn between those Councillors who are making the decision (i.e. speaking and voting as part of the hearing panel or sub-committee) and those Councillors seeking merely to influence the decision (e.g. making representations on behalf of an objector). The prohibition in respect of predetermination or bias only affects those actually making the decision. A Councillor who is not a member of a hearing panel or sub-committee who has predetermined or who is biased may still make representations at a hearing panel or sub-committee (provided that he or she does not also have a DPI or OSI in the matter).

4.4 A Councillor will have an OSI in a matter being considered at a meeting where their interest is closely aligned to the business of the agenda item and where the business affects the financial position or well being of the following to a greater extent than most inhabitants of the area affected by the decision:

i) the Councillor;

ii) a member of the Councillor's family or friends or any person with whom the Councillor has a close association;

iii) any person or body from whom a Councillor has accepted or received any gifts or hospitality as specified in Schedule Two to the Member's Code;

iv) any outside body or group specified in Schedule Two of the Members' Code of which the Councillor is a member or in a position of general control or management (as relevant).

And where a member of the public with knowledge of the relevant facts would reasonably think that the interest is so significant that it would be likely to prejudice the Councillor's judgement of the public interest.

4.5 Unless a dispensation has been granted a Councillor who has an Other Significant Interest must disclose this at the meeting, not take part in the discussion or vote and must leave the meeting room.

Predetermination

4.44.6 The law also makes a distinction between *predetermination*, which rules out participation in decision-making and *predisposition*, which does ~~not~~. A Councillor is entitled to have and to express views on local matters, both general licensing matters and more specific applications. These views may indicate that a Councillor has a predisposition towards a particular policy or viewpoint. This is perfectly acceptable and a Councillor with a predisposition may take part in decision-making.

4.54.7 A predisposition will move on to becoming predetermination if, in relation to any matter before the Committee, a Councillor has taken a stance which indicates that he or she has finally closed his or her mind on the matter and that nothing that he or she hears at Committee will alter his or her position.

4.64.8 Section 25 of the Localism Act 2011 expressly provides that a Councillor shall not be taken to have had a closed mind just because he or she has previously done anything that directly or indirectly indicated what view he or she took, or would or might take, in relation to a matter. Therefore a Councillor will not have predetermined merely because he or she has made statements about a licensing matter in the past. However, this does not mean that a Councillor is free to say or do *anything* and still participate in the debate and vote. If by his or her actions and words the Councillor makes it clear that he or she will be voting a certain way no matter what information is presented at the Hearing Panel or Sub-Committee, then he or she will have predetermined and should not take part in the decision making.

4.74.9 There is acceptance that a Councillor may legitimately consider matters in several capacities as different factors may apply to different decisions. Where

premises require both a licence and planning permission Councillors may be asked to sit on both the Planning Committee and a Hearing Panel. Premises which are sexual entertainment venues are likely to need both a licence under the Licensing Act 2003 and a licence under the Local Government (Miscellaneous Provisions) Act 1982 and again Councillors may be asked to sit on both Hearing Panels. While the statutory regimes in such cases are different, often the factors to be taken in to account can be similar. In these circumstances, Councillors should carefully consider whether anything they have done or said in making the earlier decision would demonstrate a pre-determination of the second decision. If that is the case, the Councillor should not take part in the decision making at the second committee, sub-committee or Hearing Panel.

Bias/Conflict of Interest

- 4.10 A Councillor should not be party to decisions in which he is actually biased or gives the appearance of being biased, to the reasonable observer. The test for the appearance of bias is whether a fair minded and informed observer, having considered the facts, would conclude that there was a possibility that the decision maker was biased. This can also be described as having a conflict of interest.
- 4.11 Bias may arise by virtue of a Councillor being closely connected with a person who has a vested interest in the application – either the applicant or an objector. This may result from a personal connection, such as an applicant being a relative or friend, or result from the Councillor promoting a particular viewpoint (e.g. by being part of a lobby group). The role of the Hearing Panels and Sub-Committee is to consider applications in accordance with the legislation and to balance the interests of persons with competing views and this may not be possible where a Councillor is closely connected with a particular party.
- 4.12 In addition, circumstances which raise the possibility of bias may also lead to an accusation of a breach of the Members' Code, as the Members' Code states that Councillors 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 themselves, their family, friends or close associates. Where this might occur, Councillors should not take part in the decision-making.

Particular Committees

5. Making representations to Licensing Hearing Panels

- 5.1 This Licensing Code deals with all licensing matters, but there are particular rules as to who can be heard at a Licensing Hearing Panel (which determines applications under the Licensing Act 2003 and the Gambling Act 2005).
- 5.2 In accordance with s18 of the Licensing Act 2003 (as amended) *any person* can now make representations in relation to an application to Medway Council

for the grant of a premises licence and such representations will (if they meet the other requirements of s18 of the 2003 Act) be treated as relevant representations for the purposes of the Act. In accordance with section 51 *any person* may now (in accordance with the conditions set out in Regulations) apply for a review of a premises licence under the Licensing Act 2003 where Medway Council is the licensing authority.

- 5.3 The provisions of the Gambling Act 2005 are more prescriptive. Only Responsible Authorities and Interested Parties (as defined in the Gambling Act 2005) are able to make representations.
- 5.4 Only “parties” – i.e. the applicant and any persons who have made relevant representations (under the Licensing Act 2003 or the Gambling Act 2005 as applicable) are permitted to speak at a Licensing Hearing Panel, although any party may be assisted or represented by another person.
- 5.5 A Councillor may only therefore speak at a Licensing Hearing Panel in two circumstances:
 - (i) where the Councillor has himself or herself submitted a relevant representation and is therefore a party;
 - (ii) where the Councillor has specifically been asked by a party (i.e. the applicant or a person who has made a relevant representation) to represent him or her.

It is helpful for Councillors when making representations to identify to officers which of the above categories they fall into. However, in considering whether to attend a Licensing Hearing Panel in either of the above capacities, Councillors should remember that they will not be able to appear (either on their own behalf or as a representative) if they have an OSI or if they have a DPI and do not have a dispensation.

- 5.6 Where a Councillor has made a representation on an application or has called for a review of a licence it is very likely that he or she will have pre-determined the application or would be seen to be biased and so should not sit on the Licensing Hearing Panel dealing with that application or review. To avoid any accusations of bias and/or having to cancel or postpone meetings because of Councillor interests, Councillors should not sit on Licensing Hearing Panels to determine applications in their own wards.

6. Making representations to 1982 Act Hearing Panels

- 6.1 The requirements of the Local Government (Miscellaneous Provisions) Act 1982 with regard to the making of representations on applications for sex establishment licences are less detailed than those of the Licensing Act 2003 or the Gambling Act 2005. The 1982 Act does not make specific provision for objectors to be heard at a Hearing Panel, but it is the Council’s policy to permit objectors to be heard. Therefore as above, a Councillor may address the Hearing Panel either having made an objection himself or herself, or as a

representative of an objector if requested to do so by the objector. The guidance in paragraphs 5.4 and 5.5 above therefore apply equally to 1982 Act Hearing Panels.

7. Making representations at Licensing Sub-Committee

- 7.1 The Licensing Sub-Committee hears appeals on taxi matters and other licensing matters not covered by the Licensing Hearing Panel or the 1982 Act Hearing Panel. In most of the matters dealt with by the Licensing Sub-Committee members of the public do not have rights to make representations and the Sub-Committee will be making a decision after having heard the Licensing officers and the applicant. If a Councillor wishes to make representations to the Licensing Sub-Committee he or she should contact the Licensing team for advice on whether this is possible having regard to the type of application upon which the Councillor wishes to make a representation.

Specific Areas of Guidance

8. Membership of Parish Council

- 8.1 Where a Parish Council makes representations on a licensing application, then a Councillor who is also a member of that Parish Council should not sit on a hearing panel or licensing sub-committee determining that application. It goes without saying that a Councillor should not become involved at a Medway level in applications for licences made by the Parish Council on which they serve.
- 8.2 Even where a Parish Councillor who is also a Medway Councillor is not able to sit on the hearing panel/sub-committee he or she will have the same right as any other Councillor to address the Panel/Committee (as set out above) provided they do not have a DPI- or OSI.

9. Lobbying by Councillors

- 9.1 Councillors can, of course, lobby and campaign on particular developments, but they should recognise that this may remove them from the decision making process.

9.2 If a Councillor leads, represents or is a member of a group whose primary purpose is to lobby to promote or oppose the grant of a particular licence, he or she will be considered to have predetermined an application for that licence.

~~9.2~~ 9.3 The position in 9.2 is distinct from membership of general interest groups, which reflect a Councillor's area of interest, e.g. the Licensed Victuallers Association, CAMRA, associations supporting live music. If that organisation has made representations on an application, but the Councillor has not been involved in preparing those representations, he or she will not have predetermined merely due to that membership.

9.4 Where a Councillor is in a position of general control or management of a body which has as one of its principal purposes the influence of public opinion or policy then this could also give rise to an Other Significant Interest which would prevent a Councillor from speaking or voting on the matter.

~~9.49.5~~ Councillors should not excessively lobby other Councillors regarding their views on licensing applications, nor should they, outside of the Hearing Panel or Sub-Committee, try to persuade other Councillors how to vote.

~~9.59.6~~ Councillors should not decide or discuss how to vote on licensing applications at political group meetings or lobby other Councillors to do so. Political group meetings should never dictate how Councillors vote on licensing applications.

10. Representations from Councillors at the consultation stage

10.1 Councillors who wish to take part in the debate and vote at a Hearing Panel or Sub-Committee should refrain from making representations as part of the consultation process, as this may imply predetermination.

11. Lobbying of Councillors

11.1 Lobbying is a normal and perfectly proper part of the political process. Those who may be promoting or affected by a licensing decision will often be seeking to influence it through an approach to their elected ward Councillor, another Councillor or a member of the Hearing Panel/Sub-Committee. However lobbying can, where a Councillor is a member of the Hearing Panel or Sub-Committee which will determine the application, lead to the integrity and impartiality of a Councillor being called into question. This can in turn affect the validity of a licensing decision.

11.2 A Councillor who wishes to participate in the determination of a licensing application should explain to persons lobbying or attempting to lobby that it would prejudice their impartiality and ability to participate in the decision if they discuss how he or she intends to vote or expresses sympathies with a point of view in advance of the meeting. For the avoidance of doubt a Councillor will not have predetermined

- by just listening to viewpoints from residents or interested parties;
- by making comments which fall short of prejudging the issue;
- by seeking information through appropriate channels;
- by asking questions at the Hearing Panel/Sub-Committee which reflect the issues raised.

11.3 When a Councillor participates in making a licensing decision, his or her overriding duty is to the community as a whole and not just people in his or her ward. As decisions need to be taken impartially a Councillor should not improperly favour or appear to improperly favour any person, company, group or locality. To do so is likely to be a breach of the Members' Code.

11.4 In addition to the requirement set out in the Members' Code to declare any gift or hospitality with an estimated value of at least £100, Councillors should not accept gifts or hospitality from any person involved in or affected by a licensing application. It is advisable to let the Monitoring Officer know if you feel you have been exposed to excessive lobbying or offers of gifts or hospitality linked to a licensing application. If you have personally received written representations on a licensing application you should forward copies of these to the Licensing and Local Land Charges Manager as soon as possible, as there are strict time limits for the receipt of representations in most licensing matters.

12. Contact with applicants, developers and objectors

12.1 Councillors should refer those who approach for assistance on procedural or technical licensing matters to relevant officers in the Licensing team.

12.2 Councillors who wish to consider a licensing application should not agree to formal or informal meetings with applicants, or groups of objectors. Unlike in the case of planning applications it is considered that Councillors who will be considering an application should not attend presentations on e.g. a major new licensing proposal even if it is part of a wider presentation organised by officers.

13. Policy formulation by the Council

13.1 Individual licensing applications are generally dealt with by the Hearing Panels and the Licensing Sub-Committee. The Licensing & Safety Committee has the role of considering and formulating policy and recommending the adoption of the same to Council.

13.2 Councillors may take part in both policy formulation and determining licensing applications. However, when attending meetings on policy formation Councillors should follow the guidance on pre-determination if they wish to take part in subsequent decisions on licensing applications. This will be particularly relevant where the policy being formulated is site specific.

14. Site/Vehicle inspections

14.1 In exceptional cases Councillors may not be able to appreciate points being put to them at a hearing without a site inspection (for example on an application for a sexual entertainment venue licence where representations have been made about the nature of the vicinity and Councillors are not familiar with the particular vicinity and it cannot be explained adequately at the hearing). Where, prior to committee, officers identify that photographs of the site and/or vicinity would be helpful they will include these in committee papers. Where, on receipt of the agenda, a Councillor identifies that a view of the site/vicinity would be helpful and no photographs have been included he or she should contact the Licensing team in sufficient time prior to the committee to arrange for photographs to be available at the committee (these will need to be provided to the parties *prior* to committee). In the majority of

cases this may avoid any unnecessary delay which would be caused by a site inspection. Site inspections may only be held with the agreement of the landowner.

- 14.2 In matter relating to taxis, Councillors may need to undertake a vehicle inspection.
- 14.3 It is important to remember that a site/vehicle inspection is a formal part of the licensing hearing process. The visit may be made either prior to the hearing or at the conclusion of the evidence. All members of the Hearing Panel/Sub-Committee must all attend and will be accompanied by an officer. Inspections made prior to the hearing will primarily be intended to appraise Councillors of conditions in the vicinity of the premises (and will usually be conducted in the absence of the applicant and objector(s)). Inspections following the conclusion of the evidence will primarily be used to clarify matters raised at the hearing and the applicant and objector(s) will be invited to attend, but not to make any further representations to the members of the Panel/Sub-Committee. Vehicle inspections will normally be made during the hearing process and are intended to appraise Councillors of the condition of a vehicle, where appropriate to the application/appeal. The applicant and the Licensing Officer(s) will be asked to attend, and may point out matters relevant to the condition of the vehicle but not make any further representations.
- 14.4 Where a site inspection is held the following conditions must be complied with:
 - 14.4.1 No hospitality should be accepted at site inspections.
 - 14.4.2 Councillors should endeavour to keep together as a group and not engage individually in discussions with any applicants, objectors or third parties who may be present.
 - 14.4.3 Councillors taking part in the licensing decision must not express views to anyone present. If this happens it will usually lead to a cessation of the process and a rehearing by a new panel/sub-committee.
 - 14.4.4 It is acceptable to ask officers at the site inspection questions to seek clarification on matters relevant to the site inspection.
 - 14.4.5 The site inspection should be properly recorded as part of the hearing panel/sub-committee's proceedings.
 - 14.4.6 All Councillors should remember the purpose of the site inspection and should refrain from making comments not relevant to the application to be considered by the Hearing Panel/ Sub-Committee. A site inspection is not a general public meeting and Councillors should not treat it as such.
 - 14.4.7 Councillors who wish to determine an application should not enter a site subject to a licensing proposal other than as part of an official inspection even in response to an invitation.

14.5 Councillors should comply with paragraphs 14.4.1-14.4.6 when undertaking a vehicle inspection.

15. Contact with Officers

15.1 General guidance is given in the protocol on member/employee relations in the constitution and that is not repeated here.

15.2 Councillors should not put pressure on officers to put forward a particular recommendation. However this does not prevent a Councillor asking questions or submitting views to a relevant officer.

15.3 Officers must act in accordance with the employee code of conduct and any relevant professional codes of conduct, for example the Institute of Licensing's rules for professional conduct. As a result licensing officers may on occasion take a view which could be at odds with the views, opinions or decisions of the Committee or its members.

16. Licensing applications by Councillors and officers and Council applications

16.1 Proposals to the Council by serving and former Councillors and officers and members of their family or persons with whom they have a close association can easily give rise to suspicions of impropriety, if not handled transparently. So indeed can applications made on behalf of the Council.

16.2 Councillors (and officers involved in the licensing process) who submit applications in a personal capacity should notify the Chief Legal Officer and play no part in its processing or determination and should avoid contact, whether direct or indirect with members of the relevant Hearing Panel or Sub-Committee concerning the application. Failure by a Councillor to comply with these principles could be a breach of the Members' Code.

16.3 It is perfectly legitimate for such applications to be submitted. However, it is vital to ensure that they are handled in such a way that gives no grounds for accusations of favouritism. Councillors should carefully consider using agents to submit and take forward their own applications. Without a dispensation Councillors will not be able to attend a Hearing Panel or Sub-Committee dealing with their own application, as they will have a DPI in that matter. If they wish to make representations at the Hearing Panel or Sub-Committee they should apply for a dispensation or appoint a representative to make representations on their behalf.

16.4 Serving Councillors and officers should avoid acting as agents for people pursuing a licensing applications and where they do so should play no part in the decision making process for that proposal.

16.5 Councillors considering an application must of course consider whether the nature of any relationship with the Councillor submitting the licensing application could lead to an accusation of bias. Mere membership of the

same political group is unlikely to lead to an appearance of bias, but a close friendship could as this is likely to be an OSI.

17. Decision making

17.1 Councillors making licensing decisions must

- come to meetings with an open mind and demonstrate they are open minded
- not vote or take part in the meeting's discussions on a proposal unless present to hear the entire case (including being present at any site inspection)
- come to a decision only after due consideration of all information reasonably required upon which to base such a decision
- make the licensing decision in accordance with the requirements of the relevant licensing legislation, having regard to relevant guidance and policy
- request further information if it is felt there is insufficient information before the Committee to reach a decision.

18. Training

18.1 Councillors should not participate in decision making meetings dealing with licensing matters unless they have attended any training prescribed by the Monitoring Officer.

NOTIFICATION of Disclosable Pecuniary Interests, Non-Pecuniary Interests and Gifts and Hospitality

Medway Council

To the Monitoring Officer:

From:

Surname

Forename(s) *in full*

I am a Member/Co-opted Member of Medway Council (*delete as appropriate*)

IMPORTANT NOTES

- (1) The requirement to notify the Monitoring Officer of a disclosable pecuniary interest applies not only to your own interests but also those of your husband/wife/civil partner, or a person with whom you are living as husband/wife or as if you are civil partners, where you are aware that the other person has the interest.

The term 'relevant person' therefore means you and any other person referred to above.

- (2) The requirement to notify the Monitoring Officer of any non-pecuniary interests or gifts and hospitality which the Code requires you to register applies only to your own interests and not those of your spouse or civil partner.
- (3) Details of your notified interests will appear in the Members' register of interests and will be published on Medway Council's website, and open to public inspection.
- (4) If you consider that the disclosure of the details of any of your interests could lead to you, or a person connected with you, being subject to violence or intimidation, and you would like to withhold these details from the register of interests, please provide this information to the Monitoring Officer and explain your concerns regarding the disclosure of the sensitive information, including why it is likely to create such a risk. If the Monitoring Officer agrees, the information will not be included in copies of the register made available for inspection, or any published version of the register.

Further explanatory notes are included at the end of this Notification.

a) DISCLOSABLE PECUNIARY INTERESTS

Part 1: Employment

Any employment, office, trade, profession or vocation carried on for profit or gain

You	Husband/wife/civil partner or a person with whom you are living as husband/wife or as if you are civil partners

Part 2: Sponsorship and election expenses

Any payment or provision of any other financial benefit (other than from Medway Council) ~~made~~ made or provided within the relevant period* in respect of any expenses incurred by you in carrying out duties as a member, or towards the election expenses of yourself. This includes any payment or financial benefit from a trade union within the meaning of the Trade Union and Labour Relations (Consolidation) Act 1992

*‘relevant period’ means the period of 12 months ending with the day on which you give a notification for the purposes of section 30(1) or section 31(7), as the case may be, of the Localism Act 2011

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Part 3: Contracts

Any contract which is made between the relevant person (or a body in which the relevant person has a beneficial interest*) and Medway Council

- (a) under which goods or services are to be provided or works are to be executed; and
- (b) which has not been fully discharged

*"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;

"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

You	Husband/wife/civil partner or a person with whom you are living as husband/wife or as if you are civil partners

Part 4: Land

Any beneficial interest in land* which is within the area of Medway Council.

*"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

You	Husband/wife/civil partner or a person with whom you are living as husband/wife or as if you are civil partners

Appendix H

Part 5: Licences

Any license (alone or jointly with others) to occupy land* in the area of Medway Council for a month or longer

*“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

You	Husband/wife/civil partner or a person with whom you are living as husband/wife or as if you are civil partners

Part 6: Corporate Tenancies

Any tenancy where (to your knowledge)—

- (a) the landlord is Medway Council; and
- (b) the tenant is a body in which the relevant person has a beneficial interest

*“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

“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

You	Husband/ wife/civil partner or a person with whom you are living as husband/wife or as if you are civil partners

Part 7: Securities

Any beneficial interest in securities* of a body where—

- (a) that body (to your knowledge) has a place of business or land in the area of the Medway Council; and
- (b) either—
 - (i) the total nominal value of the securities exceeds £25,000 (face value) or one hundredth (1/100th) of the total issued share capital of that body; or
 - (ii) if the share capital of that body is of more than one class, the total nominal value of the shares of any one class in which the relevant person has a beneficial interest exceeds one hundredth of the total issued share capital of that class

*“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

You	Husband/ wife/civil partner or a person with whom you are living as husband/wife or as if you are civil partners

Part 8: Declarations

a)b) NON-PECUNIARY INTERESTS AND GIFTS AND HOSPITALITY

Part 8: Membership of Outside Bodies and Groups

You only have to register your own interests and not those of your spouse or civil partner.

<p><u>Any body of which you are a member or in a position of general control or management and to which you have been appointed or nominated by the Council—</u></p>	

<p><u>Details of any body of which you are in a position of general control or management which:</u></p>	
<p>i) <u>exercises functions of a public nature (e.g. Parish Council, Health, Police or Fire Authority)</u></p>	
<p>ii) <u>is directed to charitable purposes (e.g. an Industrial and Provident Society or Charitable Body) or;</u></p>	
<p>iii) <u>includes as one of its principal purposes the influence of public opinion or policy (e.g. any political party or trade union, Professional Association, Civic Society or Interest Group (e.g. National Trust, RSPB, Greenpeace))</u></p>	

Part 9: Gifts and Hospitality

Any gift or hospitality with an estimated value of £100 or more and the name or person who provided it.

Details of, and the name of the person who provided, 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).

<u>Details of gift or hospitality</u>	<u>Name of person who provided it</u>

C) OTHER INTERESTS

Part 10: Any other interests which you wish to voluntarily disclose which are not Disclosable Pecuniary Interests or Non-Pecuniary interests

IMPORTANT

It is a criminal offence to fail to notify the monitoring officer of any disclosable pecuniary interests (DPIs). This requirement arises in each of the following circumstances:

- (a) before the end of 28 days beginning with the day on which you become a member or co-opted member of the authority (*s30(1) Localism Act 2011*);
- (b) where the DPI is not entered in the authority's register and is not the subject of a pending notification, but is disclosed at a meeting of the authority (or any committee, sub-committee, joint committee or joint sub-committee) as required by s31(2) of the Localism Act, within 28 days beginning with the date of the disclosure (*s31(3) Localism Act 2011*);
- (c) where the DPI is not entered in the authority's register and is not the subject of a pending notification, within 28 days beginning with the date when you become aware that you have a DPI 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 (~~s31~~*(s31 (7) Localism Act 2011)*).

It is also a criminal offence to knowingly provide information that is false or misleading (or being reckless as to whether the information is true and not misleading)

To the best of my knowledge, the information given in this form is complete and correct.

Signed: _____

Date: _____ 20175

This form is to be returned direct to the Monitoring Officer

This declaration has been registered by me:

Monitoring Officer _____ Date: _____ 20175

Appendix H

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You may use this space as a continuation sheet or, if necessary, attach another sheet of paper:

Appendix H

EXPLANATORY NOTES:

1. **Employment** - detail:

- (a) the nature of every employment, business, office, trade, profession or vocation that you or your husband/wife/civil partner or a person with whom you are living as husband/wife or as if you are civil partners have which is carried on for profit or gain, with a short description of the job concerned
- (b) the name and address of the employer
- (c) if you or your husband/wife/civil partner or a person with whom you are living as husband/wife or as if you are civil partners, are employed by a company, the name and address of the company paying your or their wages or salary, not that of the ultimate holding company
- (d) the name and address of any company for which you or your husband/wife/civil partner or a person with whom you are living as husband/wife or as if you are civil partners, are a paid director
- (e) the name and address of any firm in which you or your husband/wife/civil partner or a person with whom you are living as husband/wife or as if you are civil partners have, are a partner.
- (f) where you or your husband/wife/civil partner or a person with whom you are living as husband/wife or as if you are civil partners hold an office, the name of the person or body which appointed you or your husband/wife/civil partner or a person with whom you are living as husband/wife or as if you are civil partners.

If you consider that the disclosure of the details of any of your interests could lead to you, or a person connected with you, being subject to violent or intimidation (e.g. certain scientific research or the Special Forces), and you would like to withhold these details from the register of interests, please provide this information to the Monitoring Officer and explain your concerns regarding the disclosure of the sensitive information, including why it is likely to create such a risk. If the Monitoring Officer agrees, the information will not be included in copies of the register made available for inspection, or any published version of the register.

2. Sponsorship - Name of any person or body (other than Medway Council) who has made a payment to you in respect of your election or any expenses you have incurred in carrying out your duties as a Member.

3. Contracts with Medway Council - Describe the subject matter and the length of all contracts (goods, services or works) which are not fully discharged:

- (a) between you or your husband/wife/civil partner or a person with whom you are living as husband/wife or as if you are civil partners, and the Council;
- (b) between you and a firm in which you are a partner, or a company of which you are a paid director or a corporate body in which you have shares of a value described in para. 7 below;
- (c) between your husband/wife/civil partner or a person with whom you are living as husband/wife or as if you are civil partners and a firm in which they are a partner, or a company of which they are a paid director or a corporate body in which they have shares of a value described in para. 7 below.

4. Land - The address or a brief description of the property (e.g. houses, land and buildings) in the area of Medway, which you or your husband/wife/civil partner or a person with whom you are living as husband/wife or as if you are civil partners, own, lease or rent (other than leases or tenancies with the Council).

5. Licences - The address or a brief description of the property (e.g. houses, land and buildings) in the area of Medway, which you or your husband/wife/civil partner or a person with whom you are living as husband/wife or as if you are civil partners, occupy under licence (alone or jointly with others), for a month or longer.

6. Corporate tenancies - The address or a brief description of the property where:

- (a) you, or a firm in which you are a partner, a company of which you are a paid director or a person or a corporate body in which you have shares of a value described in para. 7 below, are lessees or tenants of the Council;
- (b) your husband/wife/civil partner or a person with whom you are living as husband/wife or as if you are civil partners or a firm in which they are a partner, or a company of which they are a paid director or a corporate body in which they have shares of a value described in para. 7 below, are lessees or tenants of the Council.

Appendix H

7. Securities - Name the company or other body which to your knowledge has a place of business or land in the area of Medway in which you or your husband/wife/civil partner or a person with whom you are living as husband/wife or as if you are civil partners have a shareholding of more than £25,000 (face value) or have a stake of more than 1/100th of the total issued share capital (whichever is the lower).