

**Procedure for Local Assessment of Complaints  
– Code of Conduct - Councillors and Co-opted  
Members**



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## PART 1

### INTRODUCTION

The process of dealing with complaints at a local level should be the same for all Subject Members, no matter what political party or what level of local government they represent.

When determining a complaint, the Standards Committee and its Sub-committees should be recognised as truly fair and politically unbiased, so that the public and the Authority have confidence in its procedures and findings.

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### 1.1 INTERPRETATION

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- (a) 'APE' means the Adjudication Panel for England;
- (b) 'Assessment Sub-committee' means the sub-committee established by the Standards Committee for the purposes of the initial assessment of the allegation/complaint;
- (c) 'Authority' means the Dartford Borough Council or the relevant Parish or Town Council within the Borough of Dartford;
- (d) 'Borough Council' means The Dartford Borough Council;
- (e) 'Code of Conduct' means the code adopted by the Borough Council or the relevant Parish or Town Council;
- (f) 'Complainant' means the person(s) who made the allegation/complaint;
- (g) 'ESO' means the Ethical Standards Officer of the Standards Board for England or his/her nominated representative;
- (h) 'Hearing Sub-committee' means the sub-committee established by the Standards Committee for the purposes of determining a complaint following an investigation;
- (i) 'Investigating Officer' means the Monitoring Officer or the person appointed by the Monitoring Officer to undertake the investigation into an alleged breach of the Code of Conduct;
- (j) 'IO Report' means the report of the Investigating Officer following his/her investigation of the complaint;
- (k) 'Legal Advisor' means the officer responsible for providing legal advice to the Standards Committee. This may be the Monitoring Officer, another legally qualified officer of the Authority or someone appointed for this purpose, from outside the Authority;
- (l) 'Monitoring Officer' means the officer designated as such by the Borough Council or any other person nominated by the Monitoring Officer as his/her deputy;

- (m) “Review Sub-committee” means the sub-committee established by the Standards Committee for the purposes of reviewing the Assessment Sub-committee’s decision that no action be taken on the complaint;
- (n) ‘SBE’ means the Standards Board for England;
- (o) ‘Standards Committee’ means the Standards Committee established by the Borough Council;
- (p) ‘Subject Member’ means an elected Member or voting Co-opted Member of the Authority who is the subject of the complaint.

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## 1.2 RECEIVING COMPLAINTS AND INITIAL HANDLING

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- 1.2.1 Complaints will be in writing, addressed to the Chairman of the Assessment Sub-committee, preferably using the Complaint Form at Annex 1 to this Procedure or otherwise by letter, email or fax setting out the information referred to in the Complaint Form.
- 1.2.2 The Assessment Sub-committee will deal only with complaints about the alleged behaviour and conduct of the Subject Member. It will not deal with complaints about any of the Authority’s departments, services or matters not covered by the Code of Conduct.
- 1.2.3 Any written communications received by the Chairman of the Assessment Sub-committee that appear in any way to contain allegations that a Subject Member has failed, or may have failed, to comply with the Code of Conduct will, on receipt, be referred to the Monitoring Officer.

### Anonymous complaints

- 1.2.4 An anonymous complaint will only be accepted by the Assessment Sub-committee, providing it is accompanied by independent evidence and providing that the evidence substantiates or indicates the exceptionally serious or significant nature of the complaint.

### The Monitoring Officer’s role on receipt of written complaints

- 1.2.5 If the complaint is addressed in writing to the Monitoring Officer instead of the Chairman of the Assessment Sub-committee, the Monitoring Officer will decide whether the complaint should be submitted to the Sub-committee or whether another course of action is appropriate. If the complaint is clearly not about a Subject Member’s conduct, then the Monitoring Officer will not submit the complaint to the Assessment Sub-committee, but will decide whether the complaint is of such a nature as to be dealt with through other channels e.g. another complaints procedure, the police, external auditor etc or whether any action needs to be taken at all.
- 1.2.6 The Complainant may, in the first instance, raise their concerns with the Monitoring Officer verbally. In such cases, the Monitoring Officer will ascertain whether they want to formally submit their complaint in writing to the Assessment Sub-committee. If they do not, then the Monitoring Officer may at his/her discretion, consider the options for informal resolution, if any.

1.2.7 Before referring the complaint to the Assessment Sub-Committee, the Monitoring Officer will write to the Complainant acknowledging receipt of their complaint and unless the Complainant has asked for their \*name to be kept confidential (section 2.1 of this Procedure) and the Monitoring Officer being satisfied that no restrictions apply on disclosure under Section 63 of the Local Government Act 2000 (as modified) and that there are no Data Protection Act 1998 implications, the Monitoring Officer will:

- (i) write to the Subject Member stating:
  - (a) that a complaint has been made against them;
  - (b) \*the name of the Complainant;
  - (c) the relevant paragraphs of the Code of Conduct it is alleged they have breached;
  - (d) that the complaint will be considered by the Assessment Sub-committee and the date of this meeting, if known; and
  - (e) that a written summary of the complaint may be provided to them by the Assessment Sub-Committee.
- (ii) prepare a short summary of the complaint for the Assessment Sub-committee, in accordance with section 1.2.9 of this Procedure.

## Agenda for the Assessment Sub-Committee meeting

1.2.8 The Monitoring Officer will present to the Assessment Sub-committee, the Complainant's written complaint (and any supporting documents comprising their complaint) and the Monitoring Officer's summary (section 1.2.9 of this Procedure), as a confidential report and appendices to a standard cover report.

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## 1.2.9 PRE-ASSESSMENT REPORTS AND ENQUIRIES

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1.2.9.1 The Monitoring Officer or nominee will prepare a short summary of the complaint for the Assessment Sub-committee which will address the following:

- (a) whether the complaint is within the Assessment Sub-committee's jurisdiction (section 1.6 of this Procedure);
- (b) the paragraphs of the Code of Conduct the complaint might relate to, or the paragraphs the Complainant has identified;
- (c) a summary of the key aspects of the complaint, if it is lengthy or complex;
- (d) any other information that has been obtained by the Monitoring Officer or nominee to assist the Assessment Sub-committee with its decision. Such other information may comprise:
  - (i) obtaining a copy of the Subject Member's declaration of acceptance of office form and undertaking to observe the Code;
  - (ii) minutes of meetings;
  - (iii) copy of the Subject Member's register of interests entry;
  - (iv) Companies House or Land Registry information;

- (v) other easily obtainable documents.

1.2.9.2 If Officers are unable to understand the information submitted by the Complainant, they will contact the Complainant for clarification of their complaint.

1.2.9.3 Pre-assessment enquiries will not be carried out in such a way as to amount to an investigation e.g. interview potential witnesses etc or seeking opinions on a complaint rather than factual information.

1.2.9.4 Pre-assessment reports to the Assessment Sub-committee will be drafted in such a way, as to not influence improperly the Sub-committee's decision or make the decision for the Sub-committee.

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## 1.3 ASSESSMENT SUB-COMMITTEE AND REVIEW SUB-COMMITTEE

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### Membership composition

1.3.1 The Assessment Sub-committee and the Review Sub-committee will each comprise three members of the Standards Committee as follows:

- (1) Independent Member (Chairman)
- (1) Borough Councillor
- (1) Parish/Town Council representative

1.3.2 A non dual-hatted Parish/Town Council representative must participate in the deliberations of the Assessment Sub-committee and Review Sub-committee, when a complaint relates to a Parish or Town Councillor/Co-opted Member.

1.3.3 There is no requirement for fixed membership or a fixed Chairman of the Assessment Sub-committee or Review Sub-committee. A form of 'floating' or 'pool' membership, drawn from the membership of the Standards Committee, will be implemented.

1.3.4 The quorum for a meeting of the Assessment Sub-committee and the Review Sub-committee, will, for the duration of the meeting, be three members.

1.3.5 Decisions of the Assessment Sub-committee and Review sub-committee will be taken by majority vote.

### Closed meetings

1.3.6 The deliberations of the Assessment Sub-committee and the Review Sub-committee are not subject to the following access to information rules in respect of local government committees:

1. notices of meetings;
2. circulation of agendas and documents;
3. public access to meetings;
4. validity of the proceedings.

The Sub-committees may be supported by Officers.

1.3.7 The initial assessment of the complaint by the Assessment Sub-committee and the review by the Review Sub-committee, of the decision of the Assessment Sub-

committee to take no action on the complaint, will be conducted in 'closed' session. The Complainant and the Subject Member will NOT be permitted to attend the deliberations of the Sub-Committees.

## Time limits for decision making

- 1.3.8 As a guide, the Assessment Sub-committee will take a decision on the complaint within 20 working days of its receipt. Meetings will be held in the day time.
- 1.3.9 The Review Sub-committee must conclude the review of the Assessment Sub-committee's decision to take no action, within three months of the receipt of the Complainant's request for a review. However, the Sub-committee will aim to complete the review within an average of 20 working days from receipt of the request.

## Decision making

- 1.3.10 The Assessment Sub-committee may reach one of the following decisions:
1. refer the complaint to the Monitoring Officer for investigation;
  2. refer the complaint to another authority's standards committee;
  3. refer the complaint to the Standards Board for England;
  4. take no action in respect of the complaint;
  5. refer the complaint to the Monitoring Officer for action other than investigation e.g. conciliation, mediation, mentoring, apology, training, changes to the Authority's procedures etc.
- 1.3.11 The Review Sub-committee has the same decisions available to it as the Assessment Sub-committee. In addition, the Review Sub-committee may decide that the review request will not be granted in the circumstances outlined in section 1.5.10 of this Procedure.
- 1.3.12 The purpose of the initial assessment decision or review is simply to decide whether any action should be taken on the complaint either through investigation or some other action. The Assessment Sub-committee and Review Sub-committee make no findings of fact. If the Assessment Sub-committee or Review Sub-committee refers the complaint to the Monitoring Officer for investigation or other action, it does not mean that the Sub-committee has made up its mind about the complaint. It simply means that the Sub-committee believes the alleged conduct, if proven, may amount to a failure by the Subject Member, to comply with the Code of Conduct and that some action needs to be taken in response to the complaint.

## Review of Assessment Sub-committee's decision

- 1.3.13 The Complainant, in accordance with rules detailed in section 1.5 of this Procedure, has a right of review over the Assessment Sub-committee's decision to take no action.

## Conflicts of interest

- 1.3.14 Assessment Sub-committee members cannot participate in the decision making of the Review Sub-committee, but may participate in the decision making of the Hearing Sub-committee.

- 1.3.15 Review Sub-committee members must be independent of the Assessment Sub-committee's decision but may participate in the decision making of the Hearing Sub-committee.
- 1.3.16 Standards Committee and Sub-committee members should consider not only whether they have a personal and prejudicial interest as set out in the Authority's Code of Conduct, but also, whether their connection to, relationship with or knowledge of the Subject Member could be considered to be biased or give a reasonable member of the public the impression that the decision could be partial.
- 1.3.17 Members of the Standards Committee and its Sub-committees may be regarded as having personal and prejudicial interests (not an exhaustive list) in the business of the meeting where:
- i. the complaint is likely to affect their well-being or financial position or the well-being or financial position of a friend, family member or person with whom they have a close association;
  - ii. they are directly or indirectly involved in the case in any way;
  - iii. a family member, friend or close associate is involved in the case;
  - iv. they have an interest in any other matter relating to the case, despite the fact that the outcome of any investigation or other action on the complaint could not affect a decision reached on the other matter e.g. it concerns a Subject Member's failure to declare an interest in a planning application in which the Standards Committee/Sub-committee member has an interest.
- 1.3.18 Officers should also take care to avoid any personal conflicts of interest arising when participating in the consideration of a complaint. The Monitoring Officer acts as the main adviser to the Standards Committee and its Sub-committees, unless he/she has a conflict of interest in a matter that would prevent him/her from performing the role independently.
- 1.3.19 Officers may be regarded as having personal and prejudicial interests (not an exhaustive list) in a case where:
- i. the Officer's prior involvement has been such, that others may view him/her as biased e.g. drafted letters/reports, contacted complainants, attended the final hearing.
  - ii. the Officer has an interest in any other matter relating to the case, despite the fact that the outcome of any investigation or other action on the complaint could not affect a decision reached on the other matter e.g. it concerns a Subject Member's failure to declare an interest in a planning application in which the Officer has an interest.
- 1.3.20 The Kent Monitoring Officer Protocol for Mutual Assistance at Annex 2 to this Procedure, provides for reciprocal (Officer) arrangements with neighbouring authorities, in cases of conflict.

## 1.4 ASSESSMENT PROCESS

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### Considering the complaint and making a decision

- 1.4.1 The Assessment Sub-Committee must deal with each complaint, on a case-by-case basis on its own merits, having regard to any relevant SBE guidance, advice from the Monitoring Officer and any relevant criteria and factors that the Standards Committee may determine from time-to-time.
- 1.4.2 Having assessed the complaint, the Assessment Sub-committee must take one of the decisions referred to in section 1.3.10 of this Procedure.
- 1.4.3 The Assessment Sub-Committee must record the main points it considered, its conclusion and the reasons for its conclusion.

### Considering whether to notify the Subject Member of the complaint – written summary

- 1.4.4 Only the Standards Committee and its Sub-committees have the power, under direction to the Monitoring Officer, to provide a written summary of the complaint, to the Subject Member.
- 1.4.5 The Assessment Sub-Committee must decide on the advice of the Monitoring Officer, or the ESO as appropriate, whether a written summary of the complaint should be provided to the Subject Member. The Sub-Committee will consider the Complainant's request for confidentiality (section 2.1 of this Procedure) and/or whether providing a summary, or any details of the complaint, would be contrary to the public interest (section 2.2 of this Procedure) or would prejudice any person's ability to investigate the complaint or take other action.
- 1.4.6 Where the Assessment Sub-Committee decides that a written summary of the complaint can be provided to the Subject Member, this must be sent to the Subject Member with the Decision Notice (section 1.4.9 of this Procedure) and in practice, but subject to section 1.4.7 of this Procedure, the summary will normally be included in the Decision Notice, rather than as a separate document.
- 1.4.7 Where the Assessment Sub-committee has agreed to the Complainant's request for confidentiality (section 2.1 of this Procedure) and/or further decides to refer the matter to the Monitoring Officer for investigation or other action, or to the SBE and having received advice from the Monitoring Officer, or the ESO as appropriate, the Sub-committee have reason to believe that producing a written summary is not in the public interest (section 2.2 of this Procedure) or would prejudice the investigation of the complaint or the taking of other action, the written summary will not be released until the investigation or other action process begins, at which time, the written summary will be sent to the Subject Member and the Complainant and if applicable, the Clerk to the Parish/Town Council and where the Subject Member is also a KCC member, to KCC's standards committee. The publication rules detailed in section 1.4.11 of this Procedure will apply.
- 1.4.8 The Sub-committee may on applying the public interest test at section 2.2 of this Procedure, provide limited information on the complaint. The Sub-committee will use its discretion following receipt of advice from the Monitoring or the ESO if

appropriate, that it would not be contrary to the public interest, or would not prejudice any person's ability to investigate the complaint to provide limited information.

## Notification of the decision and its publication

- 1.4.9 Within 5 working days of making the decision, the Assessment Sub-Committee will provide written notification of its decision and the reasons for the decision (the Decision Notice) and subject to sections 1.4.7, 1.4.8 and 1.4.11 of this Procedure, the written summary, to the Complainant, the Subject Member and if applicable, the Clerk to the Parish/Town Council and where the Subject Member is also a KCC member, to KCC's standards committee.
- 1.4.10 If the Assessment Sub-committee decides to refer the complaint to the Monitoring Officer for investigation or other action or to the SBE, the Decision Notice will explain the reasons for making the particular referral.
- 1.4.11 Once the Decision Notice has been communicated to the parties in accordance with section 1.4.9 of this Procedure, the Borough Council will publish the Decision Notice, so that it is available for public inspection at the Borough Council's offices for a period of 6 years, beginning with the date of the Assessment Sub-Committee meeting. The written summary will not be published until it is given to the Subject Member and other parties referred to in section 1.4.9 of this Procedure.
- 1.4.12 At no stage in the process will the Decision Notice and/or written summary of the complaint, be sent to other interested parties, before being sent to the Subject Member.
- 1.4.13 The Decision Notice will be signed for and on behalf of the Assessment Sub-committee, by the Chairman of the Sub-committee.

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## 1.5 REVIEW PROCESS

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- 1.5.1 The Complainant is entitled to request a review of the Assessment Sub-committee's decision to take no action. The request for a review will be in writing, supported by reasons.
- 1.5.2 Requests for reviews will be in writing (letter, email or fax), addressed to the Chairman of the Review Sub-committee. The request for a review must be submitted by the Complainant within 30 days following their receipt of the Assessment Sub-committee's decision.
- 1.5.3 A review may be more appropriate where the Complainant wishes to challenge that:
- not enough emphasis has been given by the Assessment Sub-committee to a particular aspect of their complaint;
  - the Assessment Sub-committee has failed to follow criteria referred to in this Procedure;
  - the Assessment Sub-committee has made an error in procedure.
- 1.5.4 The Monitoring Officer will notify the Subject Member that a request for a review of the Assessment Sub-committee's decision has been received. If applicable, the Parish/Town Clerk and where the Subject Member is also a KCC member, KCC's standards committee, will also be notified.

- 1.5.5. The Review Sub-Committee must deal with each request for a review, on a case-by-case basis, on its own merits, having regard to any relevant SBE guidance, advice from the Monitoring Officer and any relevant criteria and factors that the Standards Committee may determine from time-to-time.

## Agenda for the Review Sub-Committee meeting

- 1.5.6 The Monitoring Officer will present to the Review Sub-committee, the Complainant's written request for a review (and any supporting documents comprising their review request) and the Monitoring Officer's summary (sections 1.2.9.1 of this Procedure), as a confidential report and appendices to a standard cover report. The rules detailed in sections 1.2.9.2 - 1.2.9.4 of this Procedure, will apply.

## Conduct of review in two stages

- 1.5.7 The Review Sub-committee will determine whether the Assessment Sub-committee's decision was unreasonable on the basis of the information available to the Sub-committee at the time of its decision. The review will be conducted on the basis of the original complaint, the Monitoring Officer's report to the Assessment Sub-committee, the Assessment Sub-committee's Decision Notice and the Complainant's request for a review. Note that this is a review of the decision, rather than a reconsideration of the matter de novo.
- 1.5.8 The Review Sub-committee will consider whether there is any new evidence which demonstrates that the initial assessment decision is no longer the correct decision. This consideration will take into account any new information provided by the Complainant and/or the Monitoring Officer. No findings of fact are made by the Review Sub-committee.
- 1.5.9 If the Review Sub-committee determines that the Assessment Sub-committee's decision was unreasonable, or that new information now available, demonstrates that the Assessment Sub-committee's decision is no longer the correct decision, the Review Sub-committee must take one of the decisions referred to in section 1.3.10 of this Procedure.

## Further or new information

- 1.5.10 Where the Complainant makes further or new information of any significance available in support of their complaint that changes the nature of or gives rise to a potential 'new' complaint and the information submitted is not merely a repeat complaint, the Review Sub-committee will consider if it is more appropriate to refer the matter back to the Assessment Sub-committee as a 'new complaint'. In the circumstances, the decision arrived at by the Review Sub-committee will be 'that the review request not be granted'.
- 1.5.11 The Review Sub-Committee must record the main points it considered, its conclusion and the reasons for its conclusion.

## Concluding the review

- 1.5.12 The Review Sub-committee must conclude the review of the Assessment Sub-committee's decision to take no action, within three months of the receipt of the Complainant's request for a review. However, the Sub-committee will aim to

complete the review within an average of 20 working days from receipt of the request.

## Notification of the decision and its publication

- 1.5.13 Where the Review Sub-committee decides to uphold the Assessment Sub-committee's decision to take no action, the Decision Notice will detail the decision and the reasons for the decision. The Decision Notice will be sent to the Subject Member, the Complainant and if applicable, the Clerk to the Parish/Town Council and where the Subject Member is also a KCC member, KCC's standards committee.
- 1.5.14 Where the Review Sub-committee decides to refer the complaint to the Monitoring Officer for investigation or other action or to the SBE, the Decision Notice will detail why the particular referral has been made and will include a summary of the complaint. The Decision Notice will be sent to the Subject Member, the Complainant and if applicable, the Clerk to the Parish/Town Council and where the Subject Member is also a KCC member, KCC's standards committee.
- 1.5.15 At no stage in the process, will the Decision Notice and/or written summary of the complaint, be sent to other interested parties, before being sent to the Subject Member.
- 1.5.16 The Decision Notice will be signed for and on behalf of the Review Sub-committee, by the Chairman of the Sub-committee.
- 1.5.17 Where the Review Sub-Committee decides to uphold the Assessment Sub-Committee's decision to take no action, the Complainant cannot pursue the matter any further with the Standards Committee.

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## 1.6 JURISDICTION TESTS

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- (a) This Procedure will apply to:
- (i) complaints of breach of the Borough Council's Code of Conduct, by elected and voting Co-opted Members of the Borough;
  - (ii) complaints of breach of the Parish/Town Councils' Code of Conduct by Parish/Town Councillors and voting Co-opted Members.
- (b) The Assessment Sub-committee will assess whether the complaint falls within its jurisdiction and will need to be satisfied that the complaint meets the following tests:
- 1. is it a complaint about one or more named Subject Members?
  - 2. was the Subject Member in office at the time of the alleged conduct and was the Code of Conduct in force at the time?
  - 3. the complaint if proven, would be a breach of the Code of Conduct under which the Subject Member was operating at the time of the alleged misconduct.
- (c) If the complaint fails one or more of these tests, no further action will be taken by the Assessment Sub-committee on the complaint.
- (d) No findings of fact are made by the Assessment Sub-committee.

## 1.7 LOCAL ASSESSMENT CRITERIA FOR TAKING NO ACTION ON THE COMPLAINT

- (a) Complaints will be assessed by the Assessment Sub-Committee and Review Sub-committee against local assessment criteria set out below. This should ensure fairness for both the Complainant and the Subject Member.
- (b) The local assessment criteria may be reviewed and amended as necessary by the Monitoring Officer, but not during the consideration of a complaint.
- (c) In applying the local assessment criteria, the Assessment Sub-Committee and the Review Sub-committee should bear in mind the importance of ensuring that the Complainant is confident that his/her complaint about a Subject Member's conduct is taken seriously and dealt with appropriately. The Sub-committees should also consider that deciding to investigate a complaint or to take other action, will cost both public money and Officers' and Members' time. This is an important consideration when the complaint is relatively minor.
- (d) The local assessment criteria for taking no action on the complaint may be applied by the Assessment Sub-committee and the Review Sub-Committee.
- (e) Where the Assessment or Review Sub-committees decide to take no action on the complaint, the Decision Notice will set out clearly the reason for taking that decision and where the complaint discloses no potential breach of the Code of Conduct, the Decision Notice will detail the allegation and the Sub-committee's reasons for reaching its decision. The notification rules detailed at section 1.4.9 or 1.5.13 of this Procedure will be applied.

1. the complaint fails one or more of the jurisdiction tests (section 1.6 of this Procedure);
2. 'repeat complaints', unless supported by further evidence substantiating or indicating that the complaint is exceptionally serious or significant ;
3. the complaint is anonymous unless supported by independent documentary evidence substantiating or indicating that the complaint is exceptionally serious or significant;
4. the complaint is not about a breach of the Code of Conduct;
5. the complaint does not disclose a potential breach of the Code of Conduct;
6. no or insufficient information/evidence to substantiate the complaint has been submitted by the complainant;
7. the complaint is malicious, relatively minor, politically motivated or tit-for-tat, unless the complaint raises serious matters;
8. the complainant is unreasonably persistent, malicious and/or vexatious, unless the complaint raises serious matters;
9. the same complainant submits the same complaint a number of times, unless the complaint is supported by new evidence;
10. the alleged misconduct happened so long ago, that there is little benefit in taking action now;
11. the complaint is too trivial to warrant further action;
12. the complaint is relatively minor and dealing with the complaint would have a disproportionate effect on both public money and Officers' and Members' time;
13. the circumstances have changed so much that there would be little benefit arising from an investigation or other action;

14. the complaint has been the subject of an investigation or other action and there is nothing more to be gained by further action being taken;
15. the complaint has been the subject of investigation by other regulatory authorities and there is nothing more to be gained by further action being taken;
16. the complaint is such that it is unlikely that an investigation will be able to come to a firm conclusion on the matter e.g. where there is no firm evidence on the matter;
17. the complaint is about a deceased person;
18. the complaint is about a person who is no longer a Borough or Parish/Town Councillor or Co-opted Member or a member of another authority;
19. the alleged conduct occurred when the Subject Member was not a member of the Authority;
20. the alleged conduct occurred when the Subject Member was acting as a member of another authority;
21. the alleged conduct occurred before the adoption of the Code of Conduct;
22. the complaint is about dissatisfaction with the Authority's decision, policies and priorities etc;
23. the complaint is about alleged conduct which occurred in the Subject Member's private life.

## 2.1 CONFIDENTIALITY/ANONYMITY REQUESTS

2.1.1 The Complainant may ask for their name and details of their complaint to be kept confidential at the initial assessment stage only. Requests for confidentiality will only be granted in exceptional circumstances, at the discretion of the Assessment Sub-committee, on the advice of the Monitoring Officer and if the Sub-committee has reason to believe that:

1. the Complainant is either vulnerable or at risk of threat, harm or reprisal;
2. the Complainant may suffer intimidation or be victimised or harassed;
3. the Complainant works closely with the person they are complaining about and they are afraid of the consequences e.g. fear of losing their job;
4. the Complainant suffers from a serious health condition and there are medical risks associated with their identity being disclosed (the Complainant will need to provide medical evidence to substantiate this);
5. the Complainant may receive less favourable treatment because of the seniority of the person they are complaining about in terms of any existing Council service provision or any tender/contract they may have with or are about to submit to the Authority;
6. early disclosure of the complaint may lead to evidence being compromised or destroyed;
7. early disclosure of the complaint may impede or prejudice the investigation;
8. early disclosure of the complaint would not be in the public interest.

**Mere embarrassment is not a ground for the Complainant requesting that their name and/or complaint details be kept confidential.**

2.1.2 If the Complainant's request for confidentiality is refused by the Assessment Sub-committee, the Sub-committee will instruct the Monitoring Officer to offer to the Complainant the option to withdraw their complaint. However, in certain exceptional circumstances, the public interest in proceeding with the investigation or other action may outweigh the Complainant's request for confidentiality and the Assessment Sub-committee may have no choice, on the advice of the Monitoring Officer to disclose

the Complainant's name and/or complaint details, even if the Complainant has expressly asked that confidentiality be maintained.

- 2.1.3 Having applied the public interest test at section 2.2 of this Procedure, the Assessment Sub-committee may at its discretion, provide limited information on the complaint to the Subject Member and if applicable, the relevant Parish/Town Clerk and where the Subject Member is also a KCC member, KCC's standards committee.

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## 2.2 PUBLIC INTEREST TEST

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- 2.2.1 Public interest has been described as something that is of serious concern or benefit to the public, not merely of individual interest and does not mean 'of interest to the public', but 'in the interest of the public'.
- 2.2.2 The public interest test calls for a subjective judgement to be made, based on the circumstances of each case and in the light of any emerging SBE guidance or best practice on whether the public interest would, on balance, be better served by disclosing the details of the complaint, or part of it.
- 2.2.3 When considering whether early disclosure of the complaint would not be in the public interest, the Assessment Sub-committee, on the advice of the Monitoring Officer, must weigh the public interest considerations in favour of disclosing the complaint or part of it and the public interest considerations in favour of not disclosing the complaint or part of it.
- 2.2.4 If the public interest in not disclosing the complaint or part of it outweighs the public interest in disclosure, the details of the complaint or part of it will not be disclosed. However, if the arguments are evenly balanced, then the outcome must be disclosure.
- 2.2.5 The assessment of the public interest is a judgement in which policy and legal interpretations are both involved to some degree.
- 2.2.6 **Relevant public interest factors favouring disclosure (not an exhaustive list)**
1. facilitate transparency and ethical governance accountability – the recognition that decision-making can often be improved by constructive contributions from others;
  2. public awareness – simply because disclosing the complaint or part of it will inform the community about matters of general concern;
  3. justice to an individual - may mean that the balance of the public interest favours disclosure of the complaint to the Subject Member when it may not be in the public interest to disclose it to the world at large;
  4. bring out in the open, serious concerns about the behaviour/conduct of an individual.
- 2.2.7 **Relevant public interest factors favouring non - disclosure (not an exhaustive list)**
1. the harm test - requires something like a 'prejudice' or a 'substantial adverse effect' e.g. serious threat to the life or health of an individual or the protection of some right that is already recognised by the law e.g. legal professional privilege or legal obligations of confidence;

2. efficient and effective conduct of the Assessment Sub-committee's operations -  
\*prejudice the ability of the Sub-committee to carry out its functions in an efficient and effective way;
3. private interests (fairness to an individual) - wrong doing allegations that are untested or in relation to which there has been no chance for a response.

\*NB: there must be sufficient evidence to establish the prejudice

## 2.2.8 Irrelevant public interest factors (not an exhaustive list)

1. possible embarrassment to the Complainant, Subject Member and/or the Authority;
2. possible loss of confidence in the Authority;
3. the seniority of persons involved in the complaint;
4. mere reluctance to disclose the complaint or part of it.

## 2.2.9 Weighing the public interest on a case by case basis

<b>Stage 1 -</b>	Identifying all the public interest factors for and against disclosure that apply in the particular case; and
<b>Stage 2 -</b>	Assessing the weight of each factor and deciding whether the factors against disclosure outweigh the factors for disclosure

- a. identify the relevant public interest factors;
- b. list the factors for and those against disclosure;
- c. evaluate the relevant public interest factors, e.g. no weight, minimal weight, moderate weight or considerable weight;
- d. determine where the balance lies.

2.2.10 In evaluating the effect of disclosing the complaint or part of it, it will be necessary for the Monitoring Officer to consider the full context of that disclosure and to make a risk assessment of the disclosure and to advise the Assessment Sub-committee accordingly.

2.2.11 In considering the public interest test, the Assessment Sub-committee must take account of any SBE guidance, any advice received from the Monitoring Officer or the ESO.

## **3. REFERRALS TO THE MONITORING OFFICER FOR INVESTIGATION**

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3.1 The Assessment Sub-committee or the Review Sub-committee will refer the complaint to the Monitoring Officer for investigation when:

- (1) it is serious enough, if proven, to justify the range of sanctions available to the Standards Committee or the Adjudication Panel for England (section 14.22.2 of this Procedure);
- (2) the Subject Member's behaviour is part of a continuing pattern of less serious misconduct that is unreasonably disrupting the business of the Authority and there is no other avenue left to deal with it, short of investigation and in considering this, the Assessment Sub-committee or the Review Sub-committee will take into account the time that has passed since the alleged conduct occurred.

3.2 The investigation and hearing processes referred to at sections 13 and 14 of this Procedure, will apply.

## **4. REFERRALS TO THE MONITORING OFFICER FOR OTHER ACTION**

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4.1 The suitability of the Assessment Sub-committee or the Review Sub-committee referring the complaint to the Monitoring Officer 'for other action,' will be dependant on the nature of the complaint and this may be the simplest and most cost effective way of resolving the issues.

4.2 'Other action' is an alternative to investigation and may be appropriate where:

- (a) the Subject Member has a poor understanding of the Code of Conduct and/or related Authority procedures;
- (b) there is a breakdown in relationships;
- (c) the conduct complained of is a symptom of wider underlying conflicts which, if unresolved, are likely to lead to further misconduct or allegations of misconduct;
- (d) the conduct complained of is apparently common to a number of members of the Authority, demonstrating a lack of awareness or recognition of the particular provision(s) of the Code of Conduct;
- (e) the conduct complained of is not so serious that it requires a substantive formal sanction such as suspension or disqualification;
- (f) the complaint reveals a lack of guidance, protocols and procedures within the Authority;
- (g) the Subject Member and the Complainant are amenable to engaging in alternative action, as there is no power to require them to participate.

4.3 The Assessment Sub-committee or Review Sub-committee must consult with the Monitoring Office before reaching a decision to instruct the Monitoring Officer to take other action. The Monitoring Officer is required to comply with the Sub-committees' or ESO directions.

4.4 Complaints that have been referred to the Monitoring Officer for other action will not be referred back to the Assessment Sub-committee or Review Sub-committee, if the other action is perceived to have failed. The Sub-committee's decision to refer the complaint to the Monitoring Officer for 'other action' closes the opportunity to investigate the complaint.

4.5 Within 5 working days of the Assessment Sub-committee's or Review Sub-committee's decision to instruct the Monitoring Officer to take other action, or the SBE's direction to 'take other steps', the Monitoring Officer will inform the parties involved in writing, of the Sub-committee's decision/SBE's direction and the parties will be required to confirm in writing, that they will co-operate with the process and the Monitoring Officer will outline:

- what is being proposed;
- why it is being proposed;
- why co-operation is essential;
- what the Sub-committee hopes to achieve;
- the time scales.

4.6 The following are some examples of alternatives to investigation:

- arranging for the Subject Member to attend a training course;
- arranging for a process of conciliation/mediation (section 12 of this Procedure);
- arranging for a process of mentoring;
- arranging for an apology;
- instituting changes to the Authority's procedures;
- other steps (not including investigation) to be taken as appear appropriate to the Assessment or Review Sub-committees.

## **Monitoring Officer power to refer back to the Assessment Sub-Committee**

4.7 Where a matter has been referred to the Monitoring Officer by the Assessment Sub-Committee for action other than investigation, the Monitoring Officer may refer the matter back to the Assessment Sub-Committee:

- (i) if, as a result of new evidence or information, the Monitoring Officer is of the opinion that:
  - the matter is materially more serious or less serious than may have seemed apparent when the Assessment Sub-Committee made its decision;
  - the Assessment Sub-Committee would not have decided to refer to the Monitoring Officer for action other than investigation, had it been aware of the new evidence or information; or
- (ii) the Subject Member has died, is seriously ill, or has resigned from the Authority and the Monitoring Officer is of the opinion that, in the circumstances, it is no longer appropriate to continue with the direction to take other action.

4.8 In forming the opinion to refer back to the Assessment Sub-committee, the Monitoring Officer may take account of:

- (a) the failure of any person to co-operate with the investigation;
- (b) an allegation that the Subject Member has engaged in a further breach of the Code of Conduct;

(c) an allegation that another Member has engaged in a related breach of the Code of Conduct.

4.9 The consideration by the Assessment Sub-committee of a referral back by the Monitoring Officer, will be in closed session and the rules detailed in sections 1.3.6 and 1.3.7 of this Procedure will apply.

4.10 The Assessment Sub-Committee will consider the referral back and may take one of the decisions set out in section 1.3.10 of this Procedure and may also direct that the matter will not be referred back a further time.

## Monitoring Officer's report

4.11 Within 3 months of receipt of the Assessment Sub-committee's or Review Sub-committee's direction to take other action or as soon as reasonably practicable, the Monitoring Officer will submit a report to the Standards Committee, detailing the other action taken to comply with the direction or what action is proposed. The access to information rules in respect of local government committees, will apply.

4.12 If the Standards Committee is not satisfied with the action specified or proposed in the Monitoring Officer's report, it will direct the Monitoring Officer accordingly.

4.13 If the Standards Committee is satisfied with the action taken or proposed, the Monitoring Officer will give written notice to:

- (a) the Subject Member;
- (b) the Complainant;
- (c) KCC's standards committee (applicable only where the Subject Member is serving both at Borough and County level);
- (d) the Clerk to the relevant Parish/Town Council.

4.14 Within 3 months of receipt of the ESO's direction to require the Monitoring Officer to 'take other steps', the Monitoring Officer will submit a written report to the ESO, detailing the other action taken to comply with the direction or what action is proposed.

4.15 If the ESO is satisfied with the action taken or proposed, the Monitoring Officer will give written notice to the persons referred to in section 4.13 of this Procedure.

4.16 If the ESO is not satisfied with the action specified or proposed, the ESO may require the Monitoring Officer to arrange for a statement to be published in at least one newspaper circulating in the Borough giving:

- (a) details of the ESO direction;
- (b) the ESO's reasons for being dissatisfied;
- (c) the Monitoring Officer's response to the ESO's reasons for dissatisfaction.

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## 5. DECISION TO TAKE NO ACTION ON THE COMPLAINT

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5.1 The Assessment Sub-committee or Review Sub-committee may decide to take no action on the complaint and in so deciding, will have regard to the local assessment criteria for deciding to take no action (section 1.7 of this Procedure).

5.2 Where no potential breach of the Code of Conduct is disclosed by the complaint, no action can be taken by the Assessment Sub-committee or Review Sub-committee on it.

Therefore, the matter of referral to the Monitoring Officer for investigation or other action, does not arise.

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## **6. REFERRAL OF THE COMPLAINT TO THE STANDARDS BOARD FOR ENGLAND (SBE)**

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- 6.1 In most cases, the Assessment/Review Sub-committees will be able to deal with alleged Member misconduct complaints. However, in some instances, there may be public interest considerations which make it difficult for the Sub-committees to deal with the issues fairly and speedily and as such, the Sub-committees may wish to refer the complaint to the SBE to be investigated by an ESO. One or more of the circumstances listed in section 6.2 of the Procedure, will be taken into account by the SBE, in deciding whether it is in the public interest for it to assume responsibility for investigating the complaint.
- 6.2 If the complaint concerns one or more of the circumstances listed below, the Assessment Sub-committee or Review Sub-committee may instruct the Monitoring Officer to refer the complaint to the SBE to be investigated by an ESO. The referral will be made within 5 working days of the Sub-committee's decision and the notification rules detailed in sections 1.4.10 or 1.5.14 of this Procedure, and the publication rules at section 1.4.11, will apply.
1. the status of the person complained of or the number of persons complained of, make it difficult for the Assessment Sub-committee or Review Sub-committee to deal with the complaint e.g. Group Leader, Mayor, Cabinet member;
  2. the status of the complainant makes it difficult for the Assessment Sub-committee or Review Sub-committee to deal with the complaint e.g. Managing Director, Monitoring Officer;
  3. potential conflicts of interest of numerous members of the Standards Committee;
  4. potential conflicts of interest of the Monitoring Officer or other Officers and suitable alternative arrangements cannot be put in place to address the conflict;
  5. the complaint is so serious or complex;
  6. the complaint involves numerous councillors or co-opted members of the Authority;
  7. the complaint requires a substantial amount of evidence beyond that available from the Authority's documents, its councillors or officers;
  8. substantial governance dysfunction in the Authority or the Standards Committee;
  9. long-term or systematic bullying, disrespect and harassment which could be more effectively investigated by someone outside the Authority;
  10. the complaint raises significant or unresolved legal issues on which a national ruling would be helpful;
  11. the public might perceive the Authority to have an interest in the outcome of the case e.g. judicial review of the Authority if the complaint is upheld;
  12. new evidence comes to light, which suggests that the case is more serious than originally thought, thereby meriting the application of sanctions beyond the powers of the Standards Committee;
  13. the Monitoring Officer considers that the Councillor or any other person is wilfully obstructing the investigation;
  14. evidence of a further possible breach that relates directly to the investigation, revealing for example, a consistent pattern of behaviour;
  15. the complainant is unreasonably persistent or vexatious;
  16. exceptional circumstances which would prevent the Authority investigating the complaint competently, fairly and in a reasonable period of time.

- 6.3 The ESO has the power to investigate other matters which may amount to a breach of the Code of Conduct that come to their attention during the course of the investigation.
- 6.4 The SBE may decline to investigate the complaint and may refer the complaint back to the Standards Committee. The rules detailed in section 15.4 of this Procedure, will apply.
- 6.5 In exceptional circumstances, the SBE may decide to take no further action on a complaint referred to it. This is likely to be where the circumstances have changed so much, that there would be little benefit in an investigation or other action, or because the SBE considers that the complaint does not disclose a breach of the Code of Conduct.
- 6.6 There is no appeal mechanism against the SBE's referral back.

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## **7. REFERRAL OF THE COMPLAINT TO ANOTHER AUTHORITY'S STANDARDS COMMITTEE**

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If the complaint is about a Subject Member who is no longer a Borough or Parish/Town Councillor or Co-opted Member, but who is a member of another authority, the Assessment Sub-committee or Review Sub-committee will instruct the Monitoring Officer to refer the complaint to the standards committee of that other authority. The referral will be made within 5 working days of the Sub-committee's decision and the notification rules detailed in sections 1.4.9 or 1.5.11 of this Procedure and the publication rules at section 1.4.11, will apply.

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## **8. WITHDRAWING A COMPLAINT**

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- 8.1 The following criteria will be applied when considering the grant or refusal of the Complainant's request to withdraw their complaint after it has been lodged:
1. does the public interest (section 2.2. of this Procedure) in taking action on the complaint outweigh the Complainant's desire to withdraw the complaint?
  2. is the complaint such that action can be taken on it? e.g. an investigation without the Complainant's participation?
  3. is there an identifiable reason for the Complainant requesting to withdraw their complaint? e.g. is there information to suggest that the Complainant may have been pressurised by the person they are complaining of or an associate of theirs to withdraw the complaint?
- 8.2 If, in the Monitoring Officer's opinion, one or more of the criteria referred to in section 8.1 above applies, the Monitoring Officer, on a written report, will refer the Complainant's request to the next scheduled meeting of the Assessment Sub-committee.
- 8.3 If, in the Monitoring Officer's opinion, none of the criteria referred to in section 8.1 above applies, the Monitoring Officer, on a written report, will refer the Complainant's request to the Assessment Sub-committee or Standards Committee (whichever meeting is the earliest) for confirmation that the complaint be withdrawn.

## 9. VEXATIOUS COMPLAINTS/COMPLAINANTS

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- 9.1 Generally, dealing with a complaint is a straightforward process, but in a minority of cases, people pursue their complaints in a way which can either impede the investigation of their complaint or can have significant resource issues for the Authority. This can happen either while their complaint is being investigated, or once the Authority has finished dealing with the complaint.
- 9.2 If a Complainant behaves in a way that is unreasonably persistent and/or vexatious, the Monitoring Officer will apply the Council's Policy on Unreasonably Persistent and/or Vexatious Complainants at Annex 3 to this Procedure.
- 9.3 The following list describes some of the features of a Complainant who may be unreasonably persistent and/or vexatious. The list is not exhaustive, nor does one single feature on its own necessarily imply that the person will be considered as being in this category. The list merely includes examples of the behaviour and actions that the Authority experiences, either individually or in combination. An unreasonably persistent and/or vexatious Complainant may:
1. have insufficient or no grounds for their complaint and be making the complaint only to annoy (or for reasons that he/she does not admit or make obvious);
  2. refuse to specify the grounds of a complaint despite offers of assistance;
  3. refuse to co-operate with the complaints investigation process while still wishing their complaint to be resolved;
  4. refuse to accept that issues are not within the remit of the complaints process despite having been provided with information about the scope of the process;
  5. refuse to accept that issues are not within the power of the Council to investigate, change or influence (examples could be a complaint about something that is the responsibility of another organisation);
  6. insist on the complaint being dealt with in ways which are incompatible with the complaints process or with good practice (insisting, for instance, that there must not be any written record of the complaint);
  7. make what appear to be groundless complaints about the persons dealing with the complaints, and seek to have them dismissed or replaced;
  8. make an unreasonable number of contacts with the Council, by any means (telephone, letter, fax, email or in person) in relation to a specific complaint or complaints (it is impracticable to suggest a number in these guidelines, so staff must use their own judgement to determine what an unreasonable number is in any one case);
  9. make persistent and unreasonable demands or expectations of staff and/or the complaints process after the unreasonableness has been explained in writing (or in another appropriate form) to the complainant (an example of this could be a complainant who insists on immediate responses to numerous, frequent and/or complex letters, faxes, telephone calls or emails);
  10. threaten, harass, verbally abuse, use physical violence and repetitive language of an obsessive nature to intimidate staff and/or Councillors dealing with their complaint and/or their families;
  11. raise subsidiary or new issues whilst a complaint is being addressed that were not part of the complaint at the start of the complaints process;
  12. introduce trivial or irrelevant new information whilst the complaint is being investigated and expect this to be taken into account and commented on;
  13. change the substance or basis of the complaint without reasonable justification whilst the complaint is being addressed;

14. deny statements he/she made at an earlier stage in the complaints process;
15. electronically record meetings and conversations without the prior knowledge and consent of the other person involved;
16. adopt an excessively 'scattergun' approach, for instance, pursuing a complaint or complaints not only with the Council, but at the same time with a Member of Parliament, other councils, councillors of this and other councils, the Council's external auditor, the police, lawyers and the Local Government Ombudsman;
17. refuse to accept the outcome of the complaints process after its conclusion, repeatedly arguing the point, complaining about the outcome, and/or denying that an adequate response has been given;
18. make the same complaint repeatedly, perhaps with minor differences, after the complaints process has been concluded and insist that the minor differences make these 'new' complaints which should be put through the full complaints procedure;
19. persistently approach the Council through different routes about the same issue;
20. persist in seeking an outcome which the Council has explained is unrealistic for legal or policy (or other valid) reasons;
21. refuse to accept documented evidence as factual;
22. complain about or challenge an issue based on a historic and irreversible decision or incident;
23. refuse to accept documented evidence;
24. refuse to identify the precise issues which the complainant wishes to have investigated;
25. refuse to let the matter rest once the complaints process has been exhausted;
26. displaying unreasonable demands or expectations e.g. insisting on responses to complaints or enquiries being provided more urgently than is reasonable or normal recognised practice;
27. ulterior motives in lodging a complaint;
28. combination one or more of these features.

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## 10. MULTIPLE COMPLAINTS ABOUT THE SAME MATTER

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The Assessment Sub-committee may receive a number of complaints from different complainants about the same matter. To ensure that these are dealt with in a manner that is a practical use of time and resources, the Monitoring Officer or nominee, will present one report and recommendation that draws together all the relevant information and which highlights any substantively different or contradictory information. However, the Assessment Sub-committee must still reach a decision on each individual complaint and follow the notification and publication rules referred to respectively, in sections 1.4.9 or 1.4.10 and 1.4.11 of this Procedure.

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## 11. DUAL - HATTED SUBJECT MEMBER

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- 11.1 Where a complaint has been received about a dual-hatted Subject Member (and dual-hatted for this purpose, means a Borough and Kent County Council (KCC) Councillor), the Monitoring Officer will check if a similar allegation has been made to KCC. It will then be for the Standards Committee (having taken advice from the SBE if necessary), in discussion with the KCC's standards committee, to decide which authority will deal with the complaint. This will allow for a co-operative approach, including sharing knowledge and information about local circumstances and co-operation in carrying out investigations to ensure resources are used effectively.
- 11.2 If the complaint is referred to the other authority, the notification and publication rules referred to respectively, in sections 1.4.9 and 1.4.11 of this Procedure, will apply.

## 12. MEDIATION AND CONCILIATION

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### 12.1 Mediation

- (a) 'Mediation' is a facilitative process in which disputing parties engage the assistance of an impartial third party, the mediator, who helps them to try to arrive at an agreed resolution of their dispute. The mediator has no authority to make any decisions that are binding on the parties to the dispute and has no power to impose an outcome on disputing parties. The mediator uses certain procedures, techniques and skills to help the parties to negotiate an agreed resolution of their dispute.
- (b) Mediation may be undertaken through indirect mediation, where contact is made initially with each party separately or direct mediation, where a meeting is arranged between those in dispute to draw up a joint action plan.
- (c) The parties, rather than the mediator, decide on the terms of the settlement and it is therefore essential that all parties wish to resolve the dispute. The process is completely voluntary, so a party cannot be forced to take part in mediation and can choose to withdraw from the process at any time although the Monitoring Officer will seek the agreement of the parties that they will co-operate with the mediation process.
- (d) Mediators consciously try to avoid shaping issues, proposals or terms of settlement, or even pushing for the achievement of settlement at all. Instead, they encourage parties in a confidential and informal forum, to define problems and find solutions for themselves and they endorse and support the parties' own efforts to do so.
- (e) The outcome is an agreed compromise, which can step outside the issue in dispute.

### 12.2 Why try mediation?

- is confidential;
- is unbiased;
- is voluntary;
- encourages disputes to settle at an early stage;
- puts the parties in control
- is less stressful than an investigation into a complaint;
- could be cheaper than an investigation into a complaint;
- could resolve the dispute quicker than going through the investigation process;
- is less formal than a hearing before the Hearing Sub-committee.

### 12.3 When to use mediation

- (a) personal conflict;
- (b) to salvage, maintain or improve a relationship;
- (c) borderline cases – where the behaviour complained of is too serious to merit 'no further action' and too unimportant to merit a substantial sanction/penalty;
- (d) problems with basic administrative and local governance procedures as well as longstanding personal conflicts and communication problems within the Authority (could result in a combination of mentoring, training and mediation);
- (e) Subject Member developing a history of complaints;
- (f) Subject Member and Complainant need to work together in the future.

### 12.4 When not to use mediation

- (a) too many people involved;

- (b) serious complaints such as serial bullying or discrimination;
- (c) suspicion of fraud or impropriety;
- (d) failure to register or declare personal interests (unless this is a very small part of a bigger interpersonal issue).

### 12.5 Conciliation

- (a) 'Conciliation' is a procedure like mediation, but the third party, the conciliator, takes a more interventionist role in bringing the parties together and in suggesting possible solutions to help achieve a settlement.
- (b) The difference between conciliation and mediation lies in the fact that the 'conciliator' can make proposals for settlement, 'formulate' or 'reformulate' the terms of a possible settlement while a 'mediator' would not do so but would merely facilitate a settlement between the parties.
- (c) The conciliation outcome will be similar to mediation.

12.6 Any conciliation or mediation process will have an agreed timeframe for resolution. The process may be of an informal or formal nature, involving elements of training and mediation that will lead to an effective and fair conclusion of the matter. Any decisions reached regarding future behaviour of the Subject Member and measures to prevent a repetition of the circumstances that gave rise to the initial allegation, should be agreed by all parties.

## PART 2

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### 13. INVESTIGATION PRELIMINARIES

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#### Referral of complaint by the Assessment Sub-committee or Review Sub-committee to the Monitoring Officer for investigation

##### 13.1 Delegation of investigation

- (1) The Monitoring Officer will consider whether he/she personally investigates the complaint or delegates the role of investigation to another officer/person. The decision of the Monitoring Officer will be based on a careful assessment of the circumstances of the particular issue and any other issues appropriate to him/her and/or the Authority. Delegation of the investigation will be appropriate in the case of a conflict of interest.
- (2) The Monitoring Officer may have regard to the Protocol for Mutual Assistance by Kent Monitoring Officers at Annex 2 to this Procedure.
- (3) The Monitoring Officer will record that he/she has delegated the investigative role to another person.
- (4) The Monitoring Officer may at any time, obtain such professional advice as may be necessary for the purposes/conduct of the investigation.

##### 13.2 Modification of this Procedure

1. The conduct of the investigation will be undertaken in accordance with the rules detailed in this part of this Procedure.
2. The Monitoring Officer may for the purposes of an investigation and in consultation with the Subject Member, vary this part of the Procedure in any particular instance where the Monitoring Officer is of the opinion that such a variation is necessary, in the interests of fairness. Reasons for the variation will be recorded in writing.

##### 13.3 General rights of the Subject Member

13.3.1 The Subject Member will be provided with an opportunity to make representations on the complaint and the Investigating Officer's draft report (section 13.4.15 of this Procedure).

13.3.2 In circumstances requiring a formal Hearing Sub-committee hearing (13.4.14 of this Procedure), the Subject Member may:

- (i) attend the Hearing Sub-committee hearing and present evidence in support of his/her case;
- (ii) make representations at the Hearing Sub-committee hearing orally or in writing or through a representative;
- (iii) subject to the rules detailed in section 13.3.3 of this Procedure, call witnesses to the Hearing Sub-committee, to give evidence.

## 13.3.3 Witnesses

- (i) Witnesses will be identified at the investigation stage and their evidence supported by witness statements and/or notes of interview with the Investigating Officer. Only in exceptional circumstances, will a witness be permitted to attend a hearing without first having submitted a witness statement in advance of the hearing. The decision as to whether the circumstances are exceptional, will be a matter for the Hearing Sub-committee, whose decision will be final.
- (ii) Limits may be placed by the Hearing Sub-committee on the number of witnesses called to a formal hearing if the Sub-committee is of the view that the number is unreasonable.
- (iii) The Hearing Sub-committee may arrange for the attendance at a formal hearing of such witnesses, as the Sub-committee deems appropriate, including the Complainant. However, the Sub-committee cannot compel witnesses to appear or give evidence but could draw adverse inferences.
- (iv) The Hearing Sub-committee has the right to govern its own procedures as long as it acts fairly. The Sub-committee may therefore choose not to hear from certain witnesses if the Sub-committee is of the view that the witnesses will simply be repeating evidence of earlier witnesses or if a witness will not be providing evidence that will assist the Sub-committee in reaching its decision. The Sub-committee may also choose not to hear from witnesses if they have not submitted a witness statement in accordance with the rules detailed in section 13.3.3 of this Procedure.
- (v) If the Subject Member is to call witnesses to the Sub-committee hearing, he/she must provide notification in advance (Form D Annex 7).

## 13.3.4 Notification to relevant parties

- (1) The Monitoring Officer will, within seven working days of referral of a complaint by the Assessment Sub-committee or Review Sub-committee, notify the Subject Member and the Complainant, in writing:
  - (i) that a complaint has been referred to the Monitoring Officer for investigation and determination by the Hearing Sub-committee;
  - (ii) of the name of the person undertaking the investigation, or that someone is to be appointed.
- (2) The Monitoring Officer will record that he/she has delegated the investigative role or the taking of other action to another person.
- (3) An Investigating Officer will be appointed by the Monitoring Officer.
- (4) Within seven working days of being appointed, the Investigating Officer will notify the following in writing:

### Subject Member

- (i) that he/she has been appointed by the Monitoring Officer to investigate the complaint;

- (ii) of the details of the conduct which is the subject of the complaint, including providing the Subject Member with a copy of the complaint and the Assessment Sub-committee's or Review Sub-committee's written summary of the complaint (where this has not been provided to the Subject Member for the reasons detailed in section 1.4.7 of this Procedure);
- (iii) of the identity of the Complainant;
- (iv) of the sections(s) of the Authority's Code of Conduct which appear to be relevant to the complaint;
- (v) of the procedure which will be followed in respect of the investigation;
- (vi) that the Subject Member provide a response within 14 days (unless an extension of time is agreed) of notification with specific reference to:
  - (a) whether he/she admits or denies the breach of the Authority's Code of Conduct (Form A Annex 7);
  - (b) matters which the Investigating Officer should take into account; where possible, providing copies of any documents etc and where original documents may be inspected (Form B Annex 7);
  - (c) contact details of any potential witnesses (Form D Annex 7)

## The Complainant

The notification to the Complainant will include the matters referred to in paras. (i), (ii), (iv),(v) and (vi)(b) and (c) above.

## Clerk to the Parish/Town Council

Where the complaint relates to the conduct of a Parish/Town Councillor, the notification to the Clerk to the relevant Parish/Town Council will include the matters referred to in paras.(i) – (v) above.

## Another Authority (dual-hatted Subject Member)

Where the Subject Member is also a member KCC, the notification to KCC's standards committee will include the Assessment Sub-committee's or Review Sub-committee's Decision Notice without a written summary and that the complaint is the subject of an investigation.

## 13.3.5

### Confidentiality Agreement

The Investigating Officer will require that each recipient of information referred to in section 13.3.4 of this Procedure, maintains confidentiality and that the complaint not be disclosed to any third party, unless disclosure is to a representative, witness, immediate family members or otherwise as may be required by law or regulation. Other than members of the Sub-committee, recipients will procure in the form set out in Form E, Annex 7 to this Procedure that they agree to keep the information confidential etc. For the avoidance of doubt, members of the Sub-committee are bound by the confidentiality provisions detailed in the Code of Conduct.

## 13.4 THE INVESTIGATION

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13.4.1 The Monitoring Officer and the Investigating Officer will have regard to guidance issued from time to time by the SBE and will comply with any ESO direction.

### Monitoring Officer power to refer back to the Assessment Sub-Committee

13.4.2 Where a matter has been referred to the Monitoring Officer by the Assessment Sub-Committee for investigation, the Monitoring Officer may refer the matter back to the Assessment Sub-Committee and in forming his/her opinion to refer back, the Monitoring Officer will take account of the factors referred to in section 4.8 of this Procedure:

- (i) if, as a result of new evidence or information, the Monitoring Officer is of the opinion that:
  - the matter is materially more serious or less serious than may have seemed apparent when the Assessment Sub-Committee made its decision;
  - the Assessment Sub-Committee would not have decided to refer the complaint to the Monitoring Officer for investigation, had it been aware of the new evidence or information; or
- (ii) the Subject Member has died, is seriously ill, or has resigned from the Authority and the Monitoring Officer is of the opinion that, in the circumstances, it is no longer appropriate to continue with the direction to investigate.

13.4.3 The consideration by the Assessment Sub-committee of a referral back by the Monitoring Officer, will be in closed session and the rules detailed in sections 1.3.6 and 1.3.7 of this Procedure will apply.

13.4.4 The Assessment Sub-Committee will consider the referral back and may take one of the decisions set out in section 1.3.10 of this Procedure and may also direct that the matter will not be referred back a further time.

### Conduct of Investigation

#### 13.4.5 Powers and purpose of investigation

- (a) The Investigating Officer's powers of investigation include investigations into breaches of the Code of Conduct.
- (b) The purpose of the Investigating Officer's investigation is to enable him/her to prepare and present to the Hearing Sub-Committee, a report which will provide the Sub-Committee with sufficient information to determine whether the Subject Member has acted in breach of the Authority's Code of Conduct and where there has been a breach, whether the Sub-committee should sanction the Subject Member.
- (c) The Investigating Officer will be aware of his/her obligations under the Data Protection Act 1998 and the Human Rights Act 1998 and other relevant legislation.

#### 13.4.6 Evidence of further breaches

- (a) The Investigating Officer cannot investigate further potential breaches of the Authority's Code of Conduct, arising out of an investigation.
- (b) Where, in the course of his/her investigation, the Investigating Officer becomes aware of any new matter(s) which appears to him/her to indicate a further breach, other than the breach which he/she is currently investigating, the Investigating Officer will report to the Monitoring Officer who will, under notice to the Subject Member in accordance with sections 1.2.7 - 1.2.8, refer the matter to the Assessment Sub-committee as a 'new complaint'.

## 13.4.7 Disclosure of information

The Investigating Officer will not disclose information obtained during the course of the investigation unless:

- (a) the disclosure will assist the Monitoring Officer to perform his/her statutory functions;
- (b) the Investigating Officer has permission from the person to whom the information relates, to disclose it;
- (c) the information has already lawfully been made public;
- (d) the disclosure is made for purpose of criminal proceedings in the UK.

## 13.4.8 Termination of the investigation

The Investigating Officer may terminate his/her investigation at any point, where he/she is satisfied that he/she has sufficient information to enable him/her to report to the Hearing Sub-committee.

## 13.4.9 Agreeing in advance the relevance of documents

It may be necessary for the Investigating Officer to agree with the Subject Member which documents will be submitted in evidence. This will generally include documents which will be relied on, or in support of, the Subject Member's case. The purpose of this agreed set of documents is to ensure that the Hearing Sub-committee only read those documents which are relevant to the hearing.

## 13.4.10 Advice and Assistance to the Monitoring Officer

The Monitoring Officer may require:

- (a) the Authority to provide such advice and assistance as he/she may reasonably need to assist him/her in the investigation;
- (b) the Authority to afford him/her reasonable access to such documents in the possession of the Authority as appear to the Monitoring Officer to be necessary for the purpose of the conduct of the investigation.

## 13.4.11 Witnesses

- (i) The Investigating Officer cannot compel the attendance of witnesses or their co-operation.

- (ii) A Subject Member or any member of an Authority who is regarded as a potential witness or otherwise involved in the conduct of the investigation may be regarded as being in breach of the Authority's Code of Conduct, if they fail to co-operate with the Monitoring Officer during the conduct of the investigation.
- (iii) An officer of the Authority who is regarded as a potential witness or otherwise involved in the conduct of the investigation may be regarded as being in breach of the Authority's Employee Code of Conduct, if they fail to co-operate with the Monitoring Officer during the conduct of the investigation.
- (iv) The Investigating Officer will confirm individual witness statements/interview notes with the parties concerned before finalising his/her draft report (section 13.4.15 of this Procedure).

## 13.4.12 **Managing Information**

- (a) Maintaining confidentiality during the conduct of the investigation reduces opportunities for evidence to be seen as unfair or biased and preserves the integrity of the investigation.
- (b) The information that the Investigating Officer obtains during the course of his/her investigation will be treated as confidential. The Subject Member, the Complainant, interviewees, witnesses and others aware of the investigation will be required to maintain confidentiality [Form E Annex 7].
- (c) The fact that an investigation is being conducted does not need to remain confidential.

## 13.4.13 **Investigation costs**

The Monitoring Officer may, where he/she considers that it is appropriate in order to facilitate the conduct of the investigation, reimburse any person for reasonable costs associated with the production of documents and /or any other information which the Monitoring Officer considers to be appropriate.

## 13.4.14 **The draft report**

- (a) On the conclusion of his/her investigation and/or when the Investigating Officer is satisfied that he/she has sufficient information to present to the Hearing Sub-committee or has obtained as much information as is likely to be reasonably capable of being obtained, the Investigating Officer will issue a draft report (clearly labelled DRAFT) which will be sent in confidence, to the Subject Member and the Complainant for comment. The draft report will be marked 'confidential'. The draft report will detail:
  - (i) the relevant provisions of the law, the Authority's Code of Conduct;
  - (ii) a summary of the complaint(s);
  - (iii) the Subject Member's initial response to notification of the complaint;
  - (iv) relevant information, explanations etc which the Investigation Officer has obtained in the course of the investigation;

- (v) a list of any documents relevant to the matter;
  - (vi) a list of those persons/organisations who have been interviewed;
  - (vii) a note of any person/organisation who has failed to co-operate with the investigation and the manner in which they have failed to co-operate;
  - (viii) a statement of the Investigating Officer's draft findings of fact and reasons;
  - (ix) the Investigating Officer's conclusion as to whether the Subject Member has or has not failed to comply with the Authority's Code of Conduct.
- (b) The draft report will state that it does not necessarily represent the Investigating Officer's final finding(s) and explanation and that the investigating Officer will present a final report to the Hearing Sub-committee once he/she has considered any comments received on the draft.
- (c) The Subject Member and the Complainant may make written representations on the draft report. Such representations must be received by the Investigating Officer within 14 days of the issue of the draft report, unless an extension of time has been agreed with the Investigating Officer.
- (d) The draft report will not be sent to witnesses or other parties interviewed, as the Investigating Officer will have confirmed individual statements with the parties concerned.
- (e) Responses to the draft report may reveal the need for further investigation by the Investigating Officer or they may add nothing of further relevance.
- (f) The Investigating Officer will issue a second draft report where responses reveal the need for further investigation and where responses result in such significant changes to the report.
- (g) Once the Investigating Officer has determined that the responses received from the Subject Member add nothing of substance to the investigation, he/she will make his/her final conclusions and recommendations to the Monitoring Officer in the manner set out in section 13.4.15 of this Procedure.

## The Investigating Officer's Final Report

### 13.4.15 Finalisation of Draft Report

- (1) Having considered and/or amended the draft report in light of any comments received, the Investigating Officer will make one of the following findings:
- (a) that there has been a breach of the Authority's Code of Conduct (referred to as 'a finding of failure');
  - (b) that there has not been a breach of the Authority's Code of Conduct (referred to as 'a finding of no failure').

- (2) The Investigating Officer will produce a final written report on his/her investigation and finding(s) (the IO Report). The IO Report will be clearly labelled FINAL, dated and open to public inspection i.e. through the Hearing Sub-committee agenda process, unless it contains confidential and/or exempt information.
- (3) The IO Report will include the matters referred to in section 13.4.14(i) – (ix) of this Procedure.
- (4) The IO Report will be presented to the Monitoring Officer.
- (5) Within seven working days of the date of the IO Report, the Monitoring Officer will send a copy to:
  1. the Subject Member;
  2. where applicable, the Clerk to the relevant Parish or Town Council;
  3. the Complainant;
  4. KCC's standards committee (applicable only where the Subject Member is serving at both Borough and County level).

### 13.4.16 Finding of failure

Where the IO Report concerns a **'finding of failure'**, the Monitoring Officer will, in writing:

- (i)
  - (a) advise the persons listed in section 13.4.15(5) of this Procedure, that complaint will have to be determined by and on a formal hearing before the Hearing Sub-committee;
  - (b) draw the Subject Member's attention to his/her rights and responsibilities in accordance with section 13.3 of this Procedure;
  - (c) request the completion of Forms A: B: C: D and E at Annex 7;
  - (d) propose a date for the hearing before the Hearing Sub-committee.

### 13.4.17 Finding of no failure

- (i) Where the IO Report concerns a **'finding of no failure'**, the Monitoring Officer will, in writing, advise those persons listed in section 13.4.15(5) of this Procedure, that the IO Report will be submitted to an ordinary meeting of the Standards Committee and that the Committee may:
  - (a) accept the Investigating Officer's finding of no failure (finding of acceptance); or
  - (b) require that the allegation/complaint be determined by and on a hearing before the Hearing Sub-committee.
- (ii) All parties will be advised that the Standards Committee will at this stage, simply consider the IO Report and will not seek to interview witnesses or take representations from the parties and that the Committee's role at this point is to decide whether, based on the facts set out in the IO Report, the Committee agrees with the Investigating Officer.

## 13.5 Presentation of the IO Report to the Hearing Sub-committee

### 13.5.1 'Finding of no failure'

- (i) An ordinary meeting of the Hearing Sub-committee will be convened no later than 3 months from the date of the IO Report and the agenda published in accordance with the access to information rules detailed in the Borough Council's Standing Orders.
- (ii) The agenda will include the IO Report, a chronology of events and exhibits (background documents such as witness statements/interview notes and supporting documents).
- (iii) The agenda will be sent to the persons listed in section 13.4.15(5) of this Procedure.
- (iv) The rules relating to exempt/confidential information detailed in section 13.3.5 of this Procedure will apply.
- (v) The Hearing Sub-committee must decide at its meeting whether it agrees with the finding of no failure or believes there is a case to answer.
- (vi) The Hearing Sub-committee will simply consider the IO Report and will not seek to interview witnesses or take representations from the parties. The Sub-committee's role is to decide whether, based on the facts set out in the IO Report, the Sub-committee agrees with the finding of no failure.
- (vii) If the Hearing Sub-committee accepts the finding of no failure, the Sub-committee's acceptance will be referred to as 'a finding of acceptance'. The Sub-committee may consider whether it is minded to make any recommendation(s) to the Authority with a view to promoting high standards of conduct.
- (viii) Where the Hearing Sub-committee decides that on the balance of probability there is a case to answer, the Sub-committee will arrange for a formal hearing to be convened no later than 3 months of the date of the IO Report. The Sub-committee's decision to hold a hearing will be based on careful consideration of the information in the IO Report and on witness statements/interview notes.

### 13.5.2 'Finding of a failure'

- (i) The Hearing Sub-committee will hold a hearing in accordance with section 14 of this Procedure to determine whether a breach of the Authority's Code of Conduct has occurred and whether in consequence, any action in accordance with section 14.22.2 of this Procedure should be taken against the Subject Member.
- (ii) The Monitoring Officer will ensure, as far as possible, that all the information which is relevant to the allegation(s) against the Subject Member is identified and presented to the Hearing Sub-committee to enable the Sub-committee to come to an informed decision as to whether the Subject Member has failed to comply with the Authority's Code of Conduct and upon any consequential action.

- (iii) It should be possible for the Hearing Sub-committee to proceed on the basis of the IO Report without the need to consider any further evidence. However, additional evidence may be considered necessary:
  - a. where evidence has come to light after the conclusion of the IO Report;
  - b. where the Subject Member wishes to introduce relevant evidence not considered during the Investigating Officer's investigation.
- (iv) The Hearing Sub-committee will not re-open the investigation, although it has discretion to receive additional evidence. The Sub-committee may instruct the Monitoring Officer to obtain further information or undertake further investigation. This request can only be made once per case.

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## 14. HEARING SUB-COMMITTEE

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- 14.1 Standards Committee members involved in the Assessment Sub-committee or Review Sub-committee decision making may take part in the Hearing Sub-committee's deliberations.
- 14.2 The Hearing Sub-Committee will comprise five members of the Standards Committee as follows:
  - (1) Independent Member (Chairman)
  - (1) Independent Member
  - (2) Borough Councillors
  - (1) Parish/Town Council representative (non-dual-hatted)
- 14.3 A (non-dual-hatted) Parish/Town Council representative must participate in the deliberations of the Hearing Sub-committee, when a complaint relates to a Parish or Town Councillor.
- 14.4 There is no requirement for fixed membership or a fixed Chairman of the Hearing Sub-committee. Subject to ensuring no conflicts of interest, a form of 'floating' or 'pool' membership, drawn from the membership of the Standards Committee, will be implemented.
- 14.5 The quorum for a meeting of the Hearing Sub-committee, will be three members.
- 14.6 The Hearing Sub-committee will conduct the hearing having regard to SBE guidance and the legal requirements for publishing agendas, minutes and calling meetings, will apply to the Hearing Sub-committee.
- 14.7 The Sub-committee will conduct the hearing during the daytime and except in complicated cases, the Sub-committee will aim to complete a hearing in one sitting or in consecutive sittings of no more than one working day in total.
- 14.8 The Sub-committee hearing will be held no earlier than fourteen working days after the Monitoring Officer has copied the IO Report to the Subject Member (although the hearing could be held earlier if the Subject Member agrees e.g. when it is agreed that the only evidence before the Sub-committee will be the IO Report), but in any event, no later than three months from the date the IO Report.

14.9 The hearing should be completed within the three-month period, although the jurisdiction of the Sub-committee will not be lost where the three-month deadline is not met e.g. illness of the Subject Member. Where the Sub-committee is unable to complete the hearing within the three-month deadline, it should do so as soon as is reasonably practicable thereafter.

14.10 The Hearing Sub-committee will be supported by the Legal Advisor.

## 14.11 **Public/Press Admittance to Hearing Sub-committee meetings**

- (a) There is a clear public interest in promoting the probity (integrity and honesty) of public authorities and public confidence in them. For these reasons, the Sub-committee hearing will be held in public, unless the Sub-committee determine that protecting the privacy of anyone involved is more important than the need for a public hearing. The exclusion of the press and public will only be in exceptional circumstances.
- (b) Relevant papers i.e. reports and supporting documentation will be available for public inspection unless the following information would be disclosed:
  - 1. confidential information i.e. information that has been provided by a Government Department under the condition that it must not be revealed as well as information that cannot be revealed under any legislation or by a Court Order; or
  - 2. subject to the rules detailed in para. (g) below, exempt information falling within one or more of the exempt categories set out in Annex 4 to this Procedure.
- (c) The hearing (either in whole or in part), will be held in private where confidential information as defined in section 14.11(b)1. above is likely to be revealed.
- (d) When considering whether to exclude the press/public from a hearing, the Sub-committee will identify which parts of the report and/or other supporting information is not to be made available for public inspection.
- (e) Where evidence is heard in private, persons attending the hearing will be advised by the Chairman not to disclose or quote in public, the contents of any agenda, report or other document which is marked 'confidential' or 'not for publication' unless or until the document has been made available to the public or the press by or on behalf of the Authority.
- (f) Minutes dealing with any part of the hearing when the press/public has been excluded will be produced in a way which does not disclose confidential or exempt information for example by the use of appropriate initials to protect the identity of witness(es).
- (g) **Exempt Information**
  - (i) The Sub-committee has the discretion to decide whether or not to exclude the public if exempt information may be revealed and on the advice of the Legal Advisor, may resolve in the public interest, to disclose otherwise 'exempt information' falling within one of the specified categories of exempt information detailed in Annex 1 to this

Procedure, even where such a disclosure could cause harm to a specific interest.

- (ii) If the Sub-committee resolves to exclude the press/public to prevent exempt/confidential information from being revealed, (and reasons for so resolving will be minuted accordingly) the press/public should only be excluded for that part of the proceedings where such information is likely to be revealed e.g. if a witness's evidence is likely to reveal exempt information, the press/public will only have to be excluded while that witness is giving evidence.

## 14.12 Legal Advice

The Hearing Sub-committee may seek legal advice from its Legal Advisor at any time during the Sub-committee hearing or whilst considering the outcome. The substance of any legal advice given to the Sub-committee, may be shared with the Subject Member and other parties, if they are present at the hearing.

## 14.13 Qualified Privilege

Statements made in Hearing Sub-committee meetings are subject to the general principles of the law of defamation. However, the Sub-committee's proceedings are regarded in law as a 'privileged occasion' to which the doctrine of qualified privilege attaches to statements made in the Sub-committee's proceedings (quasi-judicial in nature) providing the following criteria are met:

- a. any opinions expressed are honestly held;
- b. opinions/statements are based on the facts of the matter;
- c. opinions/ statements are on a matter of public interest;
- d. a clear distinction is made between what is fact and what is opinion;
- e. no malice.

## 14.14 Absence of the Subject Member

- (a) Where the Subject Member fails to attend the Hearing Sub-committee, and where the Sub-committee is not satisfied with the Subject Member's explanation for his/her absence from the hearing, the Sub-committee may in the first instance, have regard to any written representations submitted by the Subject Member and may resolve to proceed with the hearing in the Subject Member's absence and make a determination or, if satisfied with the Subject Member's reasons for not attending the hearing, adjourn the hearing to another date.
- (b) The Hearing Sub-committee may resolve in exceptional circumstances, that it will proceed with the hearing on the basis that it is in the public interest to hear the allegations expeditiously [*Janik v Standards Board for England & Adjudication Panel for England (2007)*].

## 14.15 Representative

- (a) The Subject Member may choose to be represented at the Hearing Sub-committee by a lawyer or, with the prior consent of the Chairman (and subsequently endorsed by the Sub-committee), by any other person e.g. a fellow Councillor, friend or colleague.

- (b) The Hearing Sub-committee will normally give permission for a Subject Member to be represented by a non - legally qualified person but may refuse permission if the representative is directly involved in the matter under determination.
- (c) If the Subject Member is to be represented at the Hearing Sub-committee, he/she must provide notification in advance (Form C).
- (d) The Hearing Sub-committee may withdraw its permission to allow a representative if that representative disrupts the hearing. However, the Sub-committee will first issue an appropriate warning to prevent more disruptions before permission is withdrawn.

### 14.16 Indemnity for costs

- (a) The Subject Member (if a Borough Councillor or Borough Co-opted Member) may rely on the Borough Council's indemnity for meeting the cost of any representation at the Sub-Committee hearing, including any costs associated with ancillary advice provided by his/her representative during the course of the investigation. However, the Subject Member will be required to reimburse the Borough Council where the Sub-committee issues a finding of failure to comply with the Code of Conduct and that finding is not overturned on appeal. The indemnity cannot be relied on where the Subject Member admits that he/she has failed to comply with the Code of Conduct.
- (b) The Subject Member (if a Parish/Town Councillor or Parish/Town Council Co-opted Member) may rely on their Parish or Town Council indemnity or insurance arrangements (if any).

### 14.17 The Hearing Sub-committee process

1. The purpose of the hearing is to test the robustness of the IO Report by examining the reasoning contained within the Report and the quality of the evidence relied upon. This calls for an inquisitorial approach by the Hearing Sub-committee based on seeking information in order to identify potential flaws in the IO Report and to clarify issues.
2. The Sub-committee will control the hearing process and evidence presented at the hearing, including the manner in which witnesses are questioned.
3. The Rules of Substitution will not apply to the Hearing Sub-committee.

### 14.18 Preliminaries on procedural issues

1. The Hearing Sub-committee will have due regard to and conduct the hearing in accordance with this part of the Procedure and will decide on the balance of probability, whether the grounds of the complaint are upheld.
2. All matters/issues will be decided by a simple majority of votes cast. Abstentions will not be permitted.
3. Administration for the hearing will be undertaken by Member Services.

4. The hearing will be open to the public and press unless confidential information or exempt information is likely to be disclosed (section 14.11 of this Procedure).

## 14.19 The conduct of the proceedings

- (1) To avoid allegations of collusion between any parties to the hearing and Hearing Sub-committee members, all relevant parties as the Monitoring Officer, Investigating Officer, the Subject Member and representatives will assemble in the meeting room before the start of the hearing. Sub-committee members will be brought into the room by an officer of the Authority, at the beginning of the hearing.
- (2) The quorum will be three (chaired by the Independent Member/Person).
- (3) The order of business will be as follows:
  - (i) apologies for absence;
  - (ii) declarations of interests;
  - (iii) in the absence of the Subject Member, consideration as to whether to adjourn or to proceed with the hearing [section 14.14(a) of this Procedure];
  - (iv) introduction by the Chairman, of members of the Sub-committee, the Monitoring Officer, Investigating Officer, Legal Advisor, Complainant and the Subject Member and his/her representative.
  - (v) **Representations as to exempt/confidential information**
    - a. Subject to the rules detailed in sections 14.11(b) and 14.11(g) of this Procedure, the Sub-committee will consider representations/reasons from the Monitoring Officer, and/or the Subject Member, as to whether any part of the hearing should be held in private and/or whether any documents (or parts thereof) should be withheld from the public.
    - b. The Sub-committee will determine whether the public/press are to be excluded. Where it is determined not to exclude the public/press, copies of the agenda and other documentation will be made available to any members of the public/press who are present.
  - (vi) **Presentation by the Monitoring Officer of the summary of the IO Report**
    - a. The Chairman will invite the Monitoring Officer to present his/her summary of the IO Report. The Monitoring Officer will highlight whether there is prior written notice from the Subject Member of any **significant** disagreement(s) as to the facts contained in the IO Report.
    - b. The Chairman will then invite the Subject Member to confirm that the Monitoring Officer's summary is an accurate assessment of the position.
    - c. If there are disagreements as to fact and no prior written notice has

been given by the Subject Member, the Sub-committee will consider the Subject Member's reason(s) for not giving prior written notice and may:

- i. continue with the hearing relying on the information in the IO Report;
  - ii. allow the Subject Member to make representations about the issue(s) as to fact and invite the Investigating Officer to respond and subject to the rules referred to in section 13.3.3 of this Procedure, call any witness(es); or
  - iii. adjourn the hearing to arrange for appropriate witnesses to be called.
- d. If there are no disagreements as to fact, the Sub-committee will proceed to the next stage of the hearing (section 14.20(3) of this Procedure).
- e. The Sub-committee may adjourn the hearing to obtain further information or to ask the Monitoring Officer to undertake further investigation on any point(s) specified by the Sub-committee. A hearing may only be adjourned once.
- f. Where the complaint was referred to the ESO by the Assessment Sub-committee or the Review Sub-committee (section 15.1 of this Procedure), the Hearing Sub-committee may at any stage prior to the conclusion of the hearing, adjourn the hearing and make a written request to the ESO that the matter be referred back to him/her for further investigation and the request will set out the Hearing Sub-committee's reasons for making the request. The ESO will decide in accordance with section 15.2 of this Procedure.
- g. Where the complaint is referred back by the ESO to the Hearing Sub-committee, the Sub-committee will reconvene within 3 months of the ESO's referral back or as soon as practicable thereafter, to continue its deliberations on the matter.

## 14.20 Presentation of evidence

The presentation of the evidence at the hearing will be as follows:

- (1) If the Subject Member admits that he/she has failed to comply with the Authority's Code of Conduct in the manner described in the IO Report, the Sub-committee may then proceed directly to consider whether any action should be taken (sections 14.22.1 and 14.22.2 of this Procedure).
- (2) Where there are no disagreements as to fact, the Sub-committee will invite the Monitoring Officer to outline any matters which he/she would wish the Sub-committee to take account of and the Sub-committee will invite the Subject Member his/her representative to respond. The Sub-committee will then proceed to consider whether any action should be taken in accordance with section 14.22.2 of this Procedure.
- (3) Where the Subject Member disputes the facts in the IO Report:

- a. The Sub-committee will invite the Investigating Officer to make any necessary oral representations to support the relevant findings of fact in his/her report, in particular, having regard to any point(s) of difference identified by the Subject Member and why he/she [the Investigating Officer] has concluded that the Subject Member has failed to comply with the Authority's Code of Conduct.
  - b. Subject to section 13.3.3 of this Procedure, the Investigating Officer may call any supporting witness(es) (as agreed at the investigation stage) to give evidence as to any point(s) of difference.
  - c. The Sub-committee will provide the Subject Member with an opportunity to challenge any points of difference put forward by any witness(es) for the Investigating Officer by inviting the Subject Member or his/her representative to \*question the witness(es).
  - d. The Subject Member or his/her representative will be invited to make any representations to support his/her version of the facts which are in dispute and subject to the rules in section 13.3.3 of this Procedure, to call any witness(es) to give evidence as to points of difference.
  - e. The Sub-committee will provide the Investigating Officer with an opportunity to challenge any points of difference put forward by the Subject Member's witness(es) by inviting the Monitoring Officer to \*question the witness(es).  
  
*\*The Chairman may request that questions be directed through him/her*
  - f. The Sub-committee may refuse to hear evidence from a witness where the Sub-committee is satisfied that the witness is unlikely to give evidence which the Sub-committee needs to hear in order to be able to determine whether there has been a breach of the Authority's Code of Conduct.
  - g. The Sub-committee may at any time in the proceedings ask questions of the Investigating Office, Monitoring Officer, the Subject Member and witnesses and seek legal advice from the Legal Advisor.
- (4) Where the Subject Member seeks to dispute any matter in the IO Report of which he/she has not given notice (Form A), the Legal Advisor will draw this to the Sub-committee's attention and the Sub-committee will direct in accordance with section 14.19(3)(iv)c. of this Procedure.
  - (5) Any member of the Sub-committee may address questions to the Investigating Officer, Monitoring Officer, the Subject Member, and any witnesses.
  - (6) Having heard all the evidence, the Sub-committee will adjourn with the Legal Advisor and in private session, consider the representations and evidence. The Legal Advisor will advise only on matters relating to law and procedure.

## 14.21 Hearing Sub-committee findings

- (a) Where the Investigating Officer's 'finding of no failure' is accepted by the Sub-committee, the Sub-committee will make a 'finding of acceptance'.
- (b) Where the allegation/complaint has been considered at a hearing, the Sub-committee will make one of the following findings:
  - That there has been no breach of the Authority's Code of Conduct;
  - That there has been a breach of the Authority's Code of Conduct but that no action be taken;
  - That there has been a breach of the Authority's Code of Conduct and that a sanction be imposed.

## 14.22 Sanction and Penalties

### 14.22.1 Preliminaries

- (a) When deciding on a sanction/penalty as set out in section 14.22.2 of this Procedure, the Hearing Sub-committee will ensure that the application of any sanction/penalty is reasonable and proportionate to the Subject Member's behaviour and will consider the following questions along with any other relevant circumstances or other factors specific to the local environment:
  - I. what was the Subject Member's intention and did he/she know that he/she was failing to follow the Authority's Code of Conduct?
  - II. did the Subject Member receive advice from Officers before the incident and was that advice acted on in good faith?
  - III. has there been a breach of trust?
  - IV. has there been financial impropriety e.g. improper expense claims or procedural irregularities?
  - V. what was the result/impact of failing to follow the Authority's Code of Conduct?
  - VI. how serious was the incident?
  - VII. does the Subject Member accept that he/she was at fault?
  - VIII. did the Subject Member apologise to the relevant persons?
  - IX. has the Subject Member previously been reprimanded or warned for similar misconduct?
  - X. has the Subject Member previously breached of the Authority's Code of Conduct?
  - XI. is there likely to be a repetition of the incident?

- (b) Suspension may be appropriate for more serious cases such as those involving:-
- the Authority breaching equalities legislation through the Subject Member's actions;
  - bullying;
  - intimidation by threat;
  - undue political interference;
  - the Subject Member trying to gain an advantage or disadvantage for himself/herself or others;
  - improper influence;
  - dishonesty or breaches of trust.
- (c) Penalties/sanctions involving restricting access to the Authority's premises or equipment should not unnecessarily restrict the Subject Member's ability to carry out his/her responsibilities as an elected representative or Co-opted Member.
- (d) When deciding on an appropriate penalty, the Hearing Sub-committee may also wish to consider decisions made by other standards committees and case tribunals. Appropriate summaries of such decisions may be found respectively on the SBE's and APE's websites at [www.standardsboard.co.uk](http://www.standardsboard.co.uk) and [www.adjudicationpanel.co.uk](http://www.adjudicationpanel.co.uk)
- (e) The length of time summaries remain on the SBE site, will be determined by the outcome of the investigation and, where appropriate, the hearing:
- if there is no evidence of a breach, the summary is removed six months after the case is closed;
  - if no further action needs to be taken, the summary is removed two years after the case is closed;
  - if the case is referred to the APE or the Hearing Sub-committee, the summary is removed two years after the case is closed, or two years after the end of any sanction, if one is imposed.
- (f) Guidance on suspensions and what this means for Members is set out at Annex 5 to this Procedure.

## 14.22.2 **Types of Sanctions/Penalties: Code of Conduct Breaches**

- (a) Where the Subject Member has ceased to be an elected representative or Co-opted Member by the date of the hearing, the only sanction which the Sub-Committee may impose, is one of censure i.e. the issue of an unfavourable opinion or judgement.
- (b) Where the Subject Member is still an elected representative or Co-opted Member at the date of the hearing, the range of sanctions may include all, or any, or a combination of the following:

1. Censure of the Subject Member;
2. Withdrawal of allowances (para.(d) below refers);
3. Restriction of the Subject Member's access to Authority premises and use of Authority resources for up to 6\* months, provided that this is reasonable and proportionate to the nature of the breach and does not unduly restrict the Subject Member's ability to perform his/her functions as an elected representative or Co-opted member e.g. barring a Councillor from Council Offices where the misconduct relates to the bullying of Officers, or taking away the Councillor's Council-provided computer where the misconduct is related to inappropriate use of this facility;
4. Partial suspension as Councillor of the Borough or of the relevant Parish or Town Council for up to 6\* months;
5. Suspension as a Councillor of the Borough or of the relevant Parish/Town Council for up to 6\* months;
6. Suspension as a member of a relevant committee of the Authority for up to 6\* months e.g. suspension from the Development Control Board if the misconduct related to the Subject Member's participation in a planning decision where the Subject Member had a prejudicial interest;
7. That the Subject Member provides a written apology in a form specified by the Sub-committee;
8. That the Subject Member undertakes training as specified by the Sub-committee;
9. That the Subject Member undertakes conciliation or mediation (refer to para.(e) below) as specified by the Sub-committee i.e. involving an independent person to assist relevant persons in reaching agreement on matters determined by the Sub-committee;
10. Partial suspension of the Councillor for up to 6\* months until the Subject Member provides a written apology in the form specified by the Sub-committee;
11. Partial suspension of the Subject Member for up to 6\* months until the Subject Member undertakes such training, conciliation or mediation as specified by the Sub-committee;
12. Suspension of the Subject Member for up to 6\* months until the he/she provides a written apology in the form specified by the Sub-committee;
13. Suspension of the Subject Member for up to 6\* months until the he/she undertakes such training or has participated in conciliation or mediation, as specified by the Sub-committee;

\* *This period does not count towards any disqualification by reason of failure to attend a meeting for 6 months*

- (c)
  - (i) The Hearing Sub-committee may specify that any sanction(s) imposed take effect immediately; or
  - (ii) The Hearing Sub-committee may specify that any sanction(s) imposed by the Sub-committee, take effect at a later date, but within 6 months of its decision.
- (d) In addition to any one or combination of the sanctions referred to above, the Hearing Sub-committee may determine that any allowance payable to the Subject Member under the Members' Allowances Scheme be withheld during a period of suspension/partial suspension. Where payment of any allowance under the Scheme has already been made in respect of any period during which a Subject Member is suspended or partially suspended from his/her responsibilities or duties as a member of the Authority, the Sub-committee may determine that the allowance as it relates to any such period of suspension be repaid to the Authority.
- (e) Any conciliation or mediation process will have an agreed timeframe for resolution. The process may be of an informal or formal nature, involving elements of training and mediation that will lead to an effective and fair conclusion of the matter. Any decisions reached regarding future behaviour of the Subject Member and measures to prevent a repetition of the circumstances that gave rise to the initial allegation, should be agreed by all parties.

#### 14.22.3 **Deliberation/Determination as to whether there has been a breach of the Code of Conduct**

1. At this stage in the hearing process, the Hearing Sub-committee considers (in private session) on the facts it has found, whether or not the Subject Member has breached the Authority's Code of Conduct in the manner set out in the IO Report. The Sub-committee may also consider whether it is minded to make any recommendation(s) to the Authority with a view to promoting high standards of conduct.
2. The Sub-committee will make its decision on the balance of probability, based on the evidence before it during the hearing.
3. The Sub-committee may at any time come out of private session and reconvene the hearing in public in order to seek additional evidence from the Investigating Officer, the Subject Member or the witness(es). If further information to assist the Sub-committee cannot be presented, then the Sub-committee may adjourn the hearing and issue directions as to the additional evidence required and by whom.
4. Having deliberated on its decision(s) and/or recommendation(s) to the Authority, the Sub-committee will reconvene the hearing in public and the Chairman will announce the Sub-committee's principal findings of fact and the Sub-committee's decision(s) as to whether or not the Subject Member has breached the Authority's Code of Conduct [section 14.22.5 of this Procedure] including any recommendation(s) to the Authority.

#### 14.22.4 **Identification during the hearing of other potential breach(es)**

It is possible that evidence presented to the Hearing Sub-committee may highlight

other potential breaches of the Authority's Code of Conduct. In the circumstances, the Chairman will outline the Sub-Committee's concerns and recommend that the matter be referred to the Assessment Sub-committee as a 'new complaint'.

## 14.22.5 Decision – making by the Hearing Sub-committee

### (1) Finding of Acceptance

If the Hearing Sub-committee accepts the Investigating Officer's finding of no failure, the Sub-committee may still consider whether it should make any recommendation(s) to the Authority e.g. how similar incidents might be avoided in the future with a view to promoting high standards of conduct.

### (2) Decision as to no Breach

- a. If the Hearing Sub-committee determines that the Subject Member has not breached the Authority's Code of Conduct, the Sub-committee may consider whether it should make any recommendation(s) to the Authority e.g. how similar incidents might be avoided in the future with a view to promoting high standards of conduct.
- b. The representations of the Subject Member and the Monitoring Officer may be sought before the Sub-committee finalises its recommendation(s) to the Authority.
- c. Having heard the representations, the Sub-committee will adjourn and consider the recommendation(s) in private. After due deliberation, the Sub-committee will reconvene the hearing in public and the Chairman will announce the Sub-committee's recommendation(s) to the Authority.

### (3) Decision as to a breach

1. If the Hearing Sub-committee determines that the Subject Member has breached the Authority's Code of Conduct, the Sub-committee will consider:
  - (a) whether it should impose any sanction(s) and what (if any), the appropriate sanction(s) should be (section 14.22.2 of this Procedure); or
  - (b) that no action needs to be taken;
  - (c) that the matter should be referred to the APE for determination although the Sub-committee may only decide to refer the matter to the APE if it determines that the sanctions it could impose would be insufficient and the president or deputy president of the APE has agreed to accept the referral.
2. The Sub-committee may also consider whether it should make any recommendation(s) to the Authority e.g. how similar incidents might be avoided in the future with a view to promoting high standards of conduct.
3. The representations of the Subject Member and the Monitoring Officer may be sought before the Sub-committee decides on the sanction(s) to be imposed and the recommendation(s) to make to the Authority.

4. Having heard the representations, the Sub-committee will adjourn and consider in private, whether to impose a sanction(s) and where a sanction(s) is to be imposed, what sanction(s) to impose and when that sanction(s) should take effect. In deciding on the level of sanction(s), the Sub-committee should have regard to the guidance set out in section 14.22.1 of this Procedure. The Sub-committee will also determine the recommendations(s) to make to the Authority.
5. If the Sub-committee determines that the Subject Member is in breach of the Authority's Code of Conduct and that the Subject Member should be penalised, the Sub-committee may impose any one or a combination of the sanctions detailed in section 14.22.2 of this Procedure.
6. Where the complaint has a number of aspects, the Sub-committee may decide to reach a finding and impose a sanction/penalty on each aspect separately.
7. At the conclusion of its deliberations, the Sub-committee will reconvene the hearing in public and the Chairman will:
  - (i) announce whether a sanction(s) is/are being imposed, the nature of the sanction(s) and when it/they should take effect; and
  - (ii) announce the principal reasons for the decision(s); and
  - (iii) announce any recommendation(s) to the Authority; and
  - (iv) announce that the Sub-committee's full decision(s) will be produced by the Monitoring Officer within seven working days following the close of the hearing; and
  - (v) advise the Subject Member, that in respect of determinations relating to breaches of the Authority's Code, that he/she has a right to appeal against the determination to an appeals tribunal drawn from the Adjudication Panel (section 16 of this Procedure).

## 14.22.6 Notification of the Hearing Sub-committee's findings

The Monitoring Officer, will within seven working days of the announcement of the Sub-committee's decision(s) (which for the avoidance of doubt will include 'findings of acceptance' referred to in sections 13.4.17(i)(a), 13.5.1(vii), 14.21(a), 14.22.5(1) and 15.11(d) of this Procedure), provide a full written decision and the reason(s) for that decision in the format detailed in Form F to:

- the Subject Member;
- the Complainant;
- any ESO concerned;
- the Standards Committee;
- the Clerk to the relevant Parish or Town Council (Parish or Town Council IO Report only);
- KCC's standards committee (applicable only where the Subject Member is serving at both Borough and County level);
- the APE - (where the decision is to refer the matter to the APE).

## 14.22.7 Publication of the Hearing Sub-committee's findings

The following procedure will be followed in determinations related to the Authority's Code of Conduct:

1. Within seven working days of the Sub-committee's announcement of its decision(s) (which for the avoidance of doubt will include a 'findings of acceptance' referred to in sections 13.4.17(i)(a), 13.5.1(vii), 14.21(a), 14.22.5(1) and 15.11(d) of this Procedure), the Monitoring Officer will arrange for a summary of the decision(s) and reasons to be published on the Authority's and/or the relevant Parish/Town Council's website and in one or more newspapers (independent of the Authority) circulating in the Borough and in relation to Parish and Town Councillor IO Reports, in the area of the relevant Parish or Town Council:
  - A **finding of acceptance or of no breach**: Publish the name of the Subject Member, a summary of the decision and reason(s) for that decision. The Subject member is entitled to ask that there be no publication in local newspapers. It is to be noted however that the SBE will as a matter of course, publish the decision on its Website.
  - A **finding of a breach but no action to be taken**: Publish the name of the Subject Member and details of the breach, a summary of the decision and reason(s) for that decision and that the Subject Member may apply in writing for permission to appeal to the President of the APE.
  - A **finding of a breach and sanction(s) to be imposed**: Publish the name of the Subject Member and details of the breach, a summary of the decision and reason(s) for that decision, sanction(s) imposed and that the Subject Member may apply in writing for permission to appeal to the President of the APE.
2. A case summary produced by the Authority or the SBE, will be published by the SBE on its Website <http://www.standardsboard.co.uk/>
3. The Sub-committee's findings will be minuted and the minutes presented to the next ordinary meeting of the Standards Committee.

## 15. ESO INVESTIGATION

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### 15.1 Referring the complaint to the SBE

Where the Assessment or Review Sub-Committees decide to refer a complaint to the SBE, the relevant paperwork will be collated and sent to the SBE by the Monitoring Officer within 5 working days of the decision to refer.

15.2 On receipt of such a referral, the SBE will decide as follows:

- that there has been no failure to comply with the Code of Conduct; or
- refer the case back to the Standards Committee; or
- refer the case to an ESO for investigation.

### 15.3 SBE decision of 'no action'

If the SBE decides that no action should be taken, the SBE is responsible for giving written notice of its decision, to the Complainant and the Subject Member.

### 15.4 SBE decision to refer to the Standards Committee

- (a) If the SBE decides that the complaint should be dealt with by the Standards Committee, the Monitoring Officer will refer the matter to the Assessment Sub-Committee. Before making any such referral, the Monitoring Officer will write to the Complainant and the Subject Member notifying them of the SBE's decision and explaining what will happen next.
- (b) Subject to para.(c) below, the Assessment Sub-committee will convene to consider the complaint and the rules detailed in sections 1.3 and 1.4 of this Procedure will apply.
- (c) Membership of the Assessment Sub-Committee will be different to that of the Sub-committee that referred the matter to the SBE in the first instance.
- (d) The Assessment Sub-Committee has no power to refer a matter back to the SBE.

### 15.5 SBE decision to refer to an ESO for investigation

- (a) Where the SBE refers the complaint to an ESO to investigate, the ESO will conduct the investigation in accordance with their statutory duties.
- (b) Generally, the Monitoring Officer will provide the ESO with every facility and all information which he/she may reasonably require for the purposes of conducting the investigation. Specifically, the ESO has a right of access to all documents which appears to him/her necessary for the purposes of the investigation; and
  - (i) may make such inquiries of any person any as he/ she thinks necessary for the purpose of conducting the investigation;
  - (ii) may require any person to give him/her such information or explanation as he/she thinks necessary for the purposes of conducting their investigation; and

- (iii) if he/she thinks necessary, require any person to meet with them in person for the purpose of making inquiries of that person or requiring that person to provide any information or explanation.

## 15.6 The ESO's power to refer the matter to the Monitoring Officer at any time

At any stage before the completion of the investigation, the ESO may decide to cease the investigation and refer the matter back to the Monitoring Officer with a direction that the Monitoring Officer takes steps other than conducting an investigation (in which case, section 4 of this Procedure will apply); or with a direction that the Monitoring Officer carries out an investigation (in which case, sections 13 and 14 of this Procedure will apply).

## 15.7 The Monitoring Officer's power to ask the ESO to take a case back

- (a) Where an ESO refers a matter to the Monitoring Officer with a direction that the Monitoring Officer conducts an investigation, the Monitoring Officer may, at any stage before completing the investigation, write to the ESO asking that the matter be referred back to the ESO and setting out the reasons for this.
- (b) The ESO must respond to such a request within 21 days of having received it, and may:
  - decide that they (the ESO) will conduct the investigation and that the Monitoring Officer's investigation must cease; or
  - direct that the Monitoring Officer continues his/her investigation.
- (c) The Monitoring Officer may not make a further request to the ESO for a referral back, if the ESO has directed that the Monitoring Officer continue with the investigation. The investigation will be conducted in accordance with the rules detailed in sections 13.4 and 14 of this Procedure.

## 15.8 ESO conducting and concluding an investigation

Where an ESO has investigated a complaint and completed his/her investigation, the ESO may reach one of the following findings:

- that the Subject Member has not breached the Code of Conduct, or that the Subject Member has breached the Code but that the breach does not require any further action;
- that the matters which are the subject of the investigation should be referred to the president of the APE for adjudication by tribunal; or
- that the matters which are the subject of the investigation, should be referred to the Monitoring Officer.

## 15.9 ESO decision that the Subject Member has not breached the Code, or that the Subject Member has breached the Code but that the breach does not require any further action

- (a) Where an ESO makes such a decision, he/she may produce a report on the outcome of the investigation and may provide a summary of the report to any newspapers circulating in the Borough.
- (b) If the ESO does produce such a report, he/she will send a copy of the report

to the Monitoring Officer. If the ESO does not produce such a report, he/she must inform the Monitoring Officer of the outcome of the investigation.

## 15.10 ESO decision that the complaint be referred to the president of the APE for adjudication by tribunal

- (a) Where the an ESO makes such a decision, he/she will produce a report on the outcome of the investigation, refer the matter to the APE and send a copy of the report to the Monitoring Officer and the president of the APE.
- (b) The ESO may also send a copy of the report to the Standards Committee if he/ she believes it will assist the Committee in discharging its functions under the local assessment regime.

## 15.11 ESO referral to Monitoring Officer after investigation

- (a) Where an ESO makes such a referral, he/she must produce a report on the outcome of the investigation and (except in relation to a former Subject Member who is currently a KCC member), will send a copy of the report to the Monitoring Officer and the Standards Committee for consideration. The Committee will at this stage, simply consider the ESO's report and will not seek to take representations from parties. The Committee's role is to decide whether it agrees with the ESO's report, based on the facts contained within it.
- (b) In relation to a former Subject Member who is currently a KCC member, the ESO will produce a report on the outcome of the investigation and send a copy of the report to the Monitoring Officer or to KCC's Monitoring Officer.
- (c) The Monitoring Officer will send the ESO's report to the Subject Member before submitting the report to the Standards Committee.
- (d) After having considered the ESO's report, the Standards Committee will make one of the following findings:
  - (i) that it accepts that the Subject Member has not breached the Code of Conduct (finding of acceptance); or
  - (ii) that the matter should be considered by the Hearing Sub-Committee; or
  - (iii) that the matter should be referred to the APE for determination having determined that any sanctions that the Hearing Sub-committee could impose would be insufficient were a fining of failure to be made and the president or deputy president of the APE has agreed to accept the referral.
- (e) The notification and publication rules detailed in sections 14.22.6 and 14.22.7: 1 of this Procedure, will apply.

## PART 3

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### 16. APPEALS TO THE ADJUDICATION PANEL FOR ENGLAND

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- (a) The Subject Member may apply to the President of the National Adjudication Panel [at the address listed below and in the format detailed at Annex 3 to this procedure] within 21 days of the date the Hearing Sub-committee's decision to be allowed to appeal against a determination of the Sub-committee. The Subject Member may also apply for the suspension of any sanction imposed by the Sub-committee, until such time as his/her appeal is decided. The application is by way of a written notice and the President of the APE will decide on the basis of whether the facts as set out in that notice indicate any reasonable prospect of the appeal succeeding. Any appeal will be heard by an Appeals Tribunal in accordance with the rules of the Tribunal.

An appeal must specify whether the appeal is against the finding or the sanction or both. It must also specify:

- The grounds of appeal
  - Whether any application for suspension of any sanction is being made
  - Whether the Subject member consents to the appeal being dealt with in writing only
- (b) The Appeals Tribunal will uphold or dismiss the finding of the Hearing Sub-committee either in whole or in part. Rules provide for;
- (i) the approval by the Appeals Tribunal of any penalty imposed by the Committee;
  - (ii) a requirement on the Sub-committee to impose a penalty as detailed in section 14.22.2 of this Procedure; or
  - (iii) a requirement on the Sub-committee to impose a different penalty on that already imposed.
- (c) Where the Appeals Tribunal dismisses the finding(s) of the Sub-committee, the decision of the Sub-committee ceases to have effect from the date of the Appeals Tribunal decision.
- (d) The Sub-committee must comply with the Appeals Tribunal decision.
- (e) The Subject Member is responsible for meeting the cost of any representation at an Appeals Tribunal.

The Adjudication Panel for England  
23 Victoria Avenue  
Harrogate  
HG1 5RD

Tel: 01423 538783  
Fax: 01423 525164  
Email: [enquiries@adjudicationpanel.co.uk](mailto:enquiries@adjudicationpanel.co.uk)  
Website: [www.adjudicationpanel.co.uk](http://www.adjudicationpanel.co.uk)

## INFORMATIVE

No vacancy arises until the Subject Member has had an opportunity to exercise his/her right of appeal. In practical terms, the Authority should not take any steps to fill the vacancy created by the Subject member's disqualification until:

- 28 days have elapsed from the date of the Tribunal's decision and no appeal has been made to the High Court; or
- if a Subject Member does appeal to the High Court, within 28 days of the Tribunal's decision, that appeal is disposed of, abandoned or fails by reason of non-prosecution.

## PART 4

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### 17. Equalities and Diversity

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1. The Borough Council aims to eliminate discrimination in respect of sex, colour, race, nationality, ethnic group, regional or national origin, age, marital status, disability, political or religious belief, sexuality or class.
2. The Borough Council ensures that investigation decisions are free from bias or discrimination and that all Subject Members, Complainants, witnesses etc are treated fairly and with respect. The investigation services provided by the Borough Council will be conducted in a manner appropriate to the individual, whatever their background.

**Procedure for Local Assessment of Complaints  
– Code of Conduct - Councillors and Co-opted  
Members**

**ANNEX 1**

**COMPLAINT FORM**

**Procedure for Local Assessment of Complaints  
– Code of Conduct - Councillors and Co-opted  
Members**

**ANNEX 2**

**Protocol for Mutual Assistance by Kent Monitoring  
Officers**

**Procedure for Local Assessment of Complaints  
– Code of Conduct - Councillors and Co-opted  
Members**

**ANNEX 3**

**Policy on Unreasonably Persistent and/or Vexatious  
Complainants**

**Procedure for Local Assessment of Complaints  
– Code of Conduct - Councillors and Co-opted  
Members**

**ANNEX 4**

**EXEMPT INFORMATION CATEGORIES  
HUMAN RIGHTS**

**Procedure for Local Assessment of Complaints  
– Code of Conduct - Councillors and Co-opted  
Members**

**ANNEX 5**

**Standards Board for England  
Suspensions and what this means For Members**

**Procedure for Local Assessment of Complaints  
– Code of Conduct - Councillors and Co-opted  
Members**

**ANNEX 6**

**The Adjudication Panel for England  
Application for Permission to Appeal**

**Procedure for Local Assessment of Complaints  
– Code of Conduct - Councillors and Co-opted  
Members**

**ANNEX 7**

**FORMS**

<b>Form A</b>	<b>Dispute/Disagreement as to Fact</b>
<b>Form B</b>	<b>Other Evidence relevant to the Allegation</b>
<b>Form C</b>	<b>Representative</b>
<b>Form D</b>	<b>Witnesses</b>
<b>Form E</b>	<b>Confidentiality and Non-Disclosure Agreement</b>



**COMPLAINT FORM:  
CODE OF CONDUCT – BOROUGH, PARISH/TOWN COUNCILLORS AND  
CO-OPTED MEMBERS**

To: The Chairman  
 Assessment Sub-committee  
 Member Services Section  
 Dartford Borough Council  
 Civic Centre  
 Home Gardens  
 Dartford  
 Kent DA1 1DR  
[Email: assessment.sub@dartford.gov.uk](mailto:assessment.sub@dartford.gov.uk)  
 Fax: 01322 343422

**A. Your details**

**A.1** Please provide your name and contact details

**ANONYMOUS COMPLAINTS WILL ONLY BE REFERRED FOR INVESTIGATION OR SOME OTHER ACTION, IF ACCOMPANIED BY INDEPENDENT EVIDENCE TO SUBSTANTIATE OR INDICATE THE EXCEPTIONALLY SERIOUS OR SIGNIFICANT NATURE OF THE COMPLAINT**

<b>Title:</b>	
<b>First name:</b>	
<b>Last name:</b>	
<b>Address:</b>	
<b>Telephone:</b>	
<b>Email address:</b>	
<b>Signature:</b>	
<b>Date of complaint:</b>	

**A.2** Your name and summary of your complaint will normally be sent to the person you are complaining about and to the:

- Assessment Sub-committee members
- Monitoring Officer of the Borough Council
- relevant Parish/Town Clerk (if your complaint concerns a Parish/Town Councillor or Co-opted Member)

*If you have concerns about your name and/or a summary of your complaint being released, please complete Section C of this form. You may also discuss your reasons or concerns with the Monitoring Officer.*

**A.3** Please tell us which complainant type best describes you:

- A member of the public
- An elected or co-opted Member of the Borough/Parish/Town Council
- An independent member of a Standards Committee
- A Member of Parliament
- A Monitoring Officer
- Other Council employee, contractor or agent of the Council
- Other ( )

## **B. Making your complaint**

**B.1** Please provide the name of the Borough, Parish/Town Councillor(s) or Co-opted Member and their authority

<b>Title</b>	<b>First name</b>	<b>Last name</b>	<b>Council name e.g. Dartford Borough Council</b>

**B.2** Please explain in this section (and/or on separate sheets), what the Councillor or Co-opted Member has done that you believe breaches the Code of Conduct. If you are complaining about more than one Councillor or Co-opted Member, you should clearly explain what each individual person has done.

**B.3** It is important that you provide all the information you wish to have taken into account by the Assessment Sub-committee when it decides whether or not to take any action on your complaint. For example:

- you should be specific, wherever possible, about exactly what you are alleging the person said or did. For instance, instead of writing that the person insulted you, you should say what it was they said.
- you should provide 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 names and contact details, if possible.
- you should provide any relevant background information.
- if there has been a time lapse of more than 28 days since the alleged behaviour or conduct, explain why you delayed lodging your complaint.

*Provide the details of your complaint. Continue on the next page, if necessary*

**Continue on the next page, as necessary**

*Provide the details of your complaint. Continue on the next page, if necessary*

**Continue on the next page, as necessary**

*Provide the details of your complaint*

**Continue on a separate sheet(s), as necessary**

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## **C. Confidentiality of complainant and the complaint details**

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**Only complete this section if you are requesting that your name and/or details of your complaint be kept confidential.**

- C.1** As a matter of fairness and natural justice, the person you are complaining about should be told who has complained about them and the nature of the complaint against them. Your request for confidentiality and/or suppression of your complaint details will not automatically be granted. Requests for confidentiality will only be granted in exceptional circumstances at the discretion of the Assessment Sub-committee. In certain circumstances, the public interest in proceeding with an investigation, may outweigh your wish for confidentiality.
- C.2** Your name and/or details of your complaint are unlikely to be withheld during the initial assessment stage, unless the Assessment Sub-committee at its discretion, has reason to believe that:
- (1) you are either vulnerable or at risk of threat, harm or reprisal;
  - (2) you will suffer intimidation or be victimised or harassed;
  - (3) you work closely with the person you are complaining about and you are afraid of the consequences e.g. fear of losing your job;
  - (4) you suffer from a serious health condition and there are medical risks associated with your identity being disclosed (you will need to provide medical evidence to substantiate this);
  - (5) you may receive less favourable treatment because of the seniority of the person you are complaining about in terms of any existing Council service provision or any tender/contract you may have with or are about to submit to the Council;
  - (6) early disclosure of your complaint may lead to evidence being compromised or destroyed;
  - (7) early disclosure of your complaint may impede or prejudice the investigation;
  - (8) early disclosure of your complaint is not in the public interest.

**Mere embarrassment is not a ground for requesting that your name and/or complaint details be kept confidential.**

*Provide your reasoning(s) for why your name and/or details of your complaint should remain confidential. Continue on the next page, if necessary*

*Provide your reasoning(s) for why your name and/or details of your complaint should remain confidential*

**Continue on a separate sheet(s), as necessary**

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**D. Remedy sought**

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- D.1** Please indicate the remedy or remedies you are looking for or hoping to achieve by submitting this complaint

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## **E. Additional information**

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- E.1** Complaints must be submitted in writing. This includes fax and 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.
- E.2** We can also help, if English is not your first language.
- E.3** If you need any support in completing this form, please let us know as soon as possible. For more information, call our Customer Services on 01322 343434 or email [customer.services@dartford.gov.uk](mailto:customer.services@dartford.gov.uk)

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## **F. The Codes of Conduct**

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- F.1** Dartford Borough Council's Member Code of Conduct is available on the Borough Council's website [www.dartford.gov.uk](http://www.dartford.gov.uk) or a copy may be obtained by contacting Member Services (01322 343251).
- F.2** The Codes of Conduct for the Parish/Town Councils within the Borough of Dartford are available from the relevant Parish/Town Clerk whose details can be obtained from the Borough Council's website [www.dartford.gov.uk](http://www.dartford.gov.uk) or by you contacting the Parish/Town Council or Member Services Section (01322 343251).

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## **G. Equalities and Diversity**

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- G.1** Dartford Borough Council aims to eliminate discrimination in respect of sex, colour, race, nationality, ethnic group, regional or national origin, age, marital status, disability, political or religious belief, sexuality or class and will ensure that its complaints' process is free from bias or discrimination and that all those involved in the process are treated fairly and with respect. The complaints' process will be conducted in a manner appropriate to the individual, whatever their background.

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## **H. Equality monitoring**

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- H.1** If you are happy to, please complete the equalities monitoring questionnaire at Appendix 1 to this Complaint Form. This will be kept confidentially and separately to your completed Form. The details you provide will be used by Dartford Borough Council to collect statistics relating to equalities and complaints about Councillor and Co-opted Member conduct. They may also form part of the statistics supplied by the Borough Council, to the Standards Board for England, concerning the operation of this complaints' process.

**DARTFORD BOROUGH COUNCIL****MONITORING EQUALITY IN THE COMPLAINTS' PROCESS**

We seek to ensure that all sections of the community have access to our services. The following information will be used for monitoring and statistical purposes only. Any information provided will not be taken into account in considering your complaint.

**Please tick the circles as appropriate (or delete other options)**

1. **Ethnic Group** *Ethnic groups are not about nationality, place of birth or citizenship. They are about colour and cultural background.*

**White**

- British
- Irish
- Any other white background

**Mixed**

- White and Black Caribbean
- White and Black African
- White and Asian
- Any other mixed background

**Asian or Asian British**

- Indian
- Pakistani
- Bangladeshi
- Any other Asian background

**Black or Black British**

- Caribbean
- African
- Any other black background

**Chinese**

- Chinese

**Other ethnic group**

- Any other group

2. **Age:**

- 16-19
- 20-24

- 25-59
- 60-64
- 65 and above

**3. Do you have a disability?**

- Yes  No

**If you do, what is the nature of your disability?**

- Difficulty getting around
- Hearing difficulty
- Difficulty seeing
- Learning difficulty
- Mental health problems
- Other

## **TERMS OF PROTOCOL FOR MUTUAL ASSISTANCE BY KENT MONITORING OFFICERS**

1. The presumption should be that Monitoring Officers for all Kent authorities will use the resources of their own authority in advising Standards Committees or in carrying out investigations.
2. Where: -
  - (a) Counsel advises there is a conflict of interest within an authority;
  - (b) the Standards Committee of an authority judges that the Monitoring Officer or his staff are subject to conflicts of interest;
  - (c) where the Standards Board for England has advised that the Monitoring Officer or his staff are subject to conflicts of interest, and the nature of those conflicts are such that neither the Monitoring Officer nor a member of their staff are competent to carry out work associated with a Code of Conduct matter then the Monitoring Officer may seek assistance on the following terms.
3. Kent will be divided into the following geographical areas: -

### **East Kent Authorities**

- (1) Shepway
- (2) Ashford
- (3) Swale
- (4) Canterbury
- (5) Thanet
- (6) Dover

### **County and Unitary Authorities**

- (1) Kent County Council
- (2) Medway
- (3) London Borough of Bexley

### **West Kent Authorities**

- (1) Tunbridge Wells
- (2) Tonbridge & Malling
- (3) Dartford
- (4) Gravesham
- (5) Maidstone
- (6) Sevenoaks

4. (a) Kent County Council, Medway Council and the London Borough of Bexley will seek assistance from each other failing which the County Council may seek assistance from such West Kent authorities and Medway Council from such East Kent authorities as their Monitoring Officers consider are appropriate in the circumstances of the case.  
  
(b) Subject to paragraph 5 below each other authority will seek assistance from the higher numbered authority immediately above them. Failing that authority, they will proceed to the next highest numbered authority save for the highest numbered authorities who will apply to the authority with the lowest number and thereafter proceed upwards through the numbered authorities.
5. A Monitoring Officer approached for assistance by a second Monitoring Officer shall use his reasonable endeavours to provide it if he has previously asked for assistance from that second Monitoring Officer and that assistance has been given. Once reciprocal assistance has been given to the second Monitoring Officer this obligation is discharged. If such an outstanding obligation exists between one Monitoring Officer and another then the Monitoring Officer owed the obligation may approach the other before approaching any other Monitoring Officer.
6. The obligations of the Monitoring Officer seeking assistance is to describe the work involved together with the best estimate of time in sufficient detail to allow another Monitoring Officer from whom assistance is requested to know the nature and scale of the task. The second Monitoring Officer must promptly seek clarification if necessary but having received sufficient detail must respond promptly accepting or rejecting the task. The task should only be rejected for reasons of pressure of work (which must be extreme if a reciprocal obligation as per paragraph 5 exists) or familiarity with the complainant and/or the victim. In his acceptance he should specify his hourly rate or rates (which should be his normal hourly rates charged to his own authority with no allowance for uplift) and identify with members of his staff (if any) who will be assisting in the task.
7. The monitoring Officer who has successfully sought assistance from another Monitoring Officer shall use reasonable endeavours to render every assistance including arranging meetings of his authority's Standards Committee during the day.
8. Nothing in this Protocol is intended to dissuade any Monitoring Officer from seeking the preliminary views of other monitoring Officers on whether a matter is suitable to be dealt with under this protocol or whether private sector legal advice is required.



## Policy on Unreasonably Persistent and/or Vexatious Complainants

### 1. Introduction

- 1.1 Generally, dealing with a complaint is a straightforward process, but in a minority of cases, people pursue their complaints in a way which can either impede the investigation of their complaint or can have significant resource issues for the Council. This can happen either while their complaint is being investigated, or once the Council has finished dealing with the complaint.
- 1.2 If a complainant behaves in a way that is unreasonably persistent or vexatious, the Council will implement this Policy.

### 2. Principles

- 2.1 The Council is committed to dealing with all complaints equitably, comprehensively, and in a timely manner.
- 2.2 The Council does not normally limit the contact which complainants have with Council staff and/or Councillors.
- 2.3 The Council does not expect staff and/or Councillors to tolerate unacceptable behaviour by complainants or any customer. Unacceptable behaviour includes behaviour which is abusive, offensive or threatening. The Council will take action to protect staff and/or Councillors from such behaviour.

### 3. Aim of this Policy

- 3.1 This Policy contributes to the Council's overall aim of dealing with all complainants in ways which are demonstrably consistent and equitable.
- 3.2 This Policy sets out how the Council will decide which complainants will be treated as vexatious or unreasonably persistent and what the Council will do in those circumstances.

### 4. Definition

- 4.1 The Council defines unreasonably persistent and vexatious complainants as those complainants who, because of the frequency or nature of their contacts with the Council, hinder the Council's consideration of their or other people's complaints or the delivery of Council services. The descriptions of 'unreasonably persistent' and 'vexatious' may apply separately or jointly to a particular complainant.
- 4.2 There is a difference between 'persistent' complainants and 'unreasonably persistent' complainants. The guidelines which accompany this Policy provides examples of 'unreasonable' and 'vexatious' behaviour to help staff and/or Councillors determine this difference. Examples include the way or frequency that complainants raise their complaint with staff and/or Councillors, or how complainants respond, when informed of the Council's decision about their complaint.
- 4.3 There is a difference between 'unreasonably persistent' and 'vexatious' complainants. A vexatious person in this context, is someone who is not seeking to resolve a dispute between themselves and the Council, but is seeking to cause unnecessary aggravation or annoyance to the Council.
- 4.4 Unreasonably persistent complainants or vexatious complainants may have justified complaints or grievances, but are pursuing them in inappropriate ways. Alternatively, they may be intent on pursuing complaints which appear to have no substance or which have already been investigated and settled. Their contacts with the Council may be amicable



but still place heavy demands on staff and/or Councillor time, or they may be distressing for all involved.

## 5. Decision

- 5.1 Before making the decision to apply this Policy, some or all of the following steps may be taken:
1. The Council will ensure that the complaint is being, or has been, investigated properly according to the relevant complaints procedure/process.
  2. Although each complaint is unique, the Council will deal with the complaint in line with other complaints of a similar nature in order to apply a consistent approach.
  3. The Council will contact the complainant to:
    - i. discuss his/her behaviour;
    - ii. explain why this behaviour is causing the Council concern;
    - iii. ask him/her to change this behaviour; and
    - iv. explain the actions that the Council may take if his/her behaviour does not change.
  4. If the complainant has not already had a meeting with staff about the complaint and provided that the Council knows nothing about the complainant which would make this inadvisable, the Council may consider offering the complainant a meeting with a member of staff of appropriate seniority. Sometimes, such meetings can dispel misunderstandings and move matters towards a resolution.
- 5.2 The decision to apply this Policy:
1. will be an exceptional step, and
  2. will be taken at Director level in consultation with the Head of Legal Services or another Director, as set out in the accompanying guidelines.

## 6. Actions

- 6.1 Any restriction that is imposed on the complainant's contact with the Council must be appropriate and proportionate. The options most likely to be considered are included in the guidelines. Even where restrictions are placed on an individual's contact with the Council, they cannot be prevented from submitting a complaint.
- 6.2 When the decision has been taken to apply this Policy to a complainant, the Council will contact the complainant in writing to explain:
1. why the Council has taken the decision;
  2. what action the Council is taking;
  3. the duration of that action;
  4. the review process of this Policy; and
  5. the right of the complainant to contact the Local Government Ombudsman.
- 6.3 The Council will enclose a copy of this Policy and the guidelines which accompany it in the letter to the complainant, or if it is necessary that contact with the complainant is not primarily in writing, the Council will offer appropriate support to explain the Policy and guidelines to the complainant.



- 6.4 Where a complainant continues to behave in a way which is unacceptable, the Council may decide to refuse all contact with the complainant and may stop any investigation into his/her complaint.
- 6.5 Where the behaviour is so extreme that it threatens the immediate safety and welfare of staff and/or Councillors, the Council will consider other options, for example reporting the matter to the police or taking legal action. In such cases, the Council is not obliged to give the complainant prior warning of that action.
- 6.6 New complaints from persons to whom this Policy has been applied, will be treated on their merits and decisions will need to be taken on whether any restrictions which have been previously applied, are still appropriate and necessary.
- 6.7 The fact that a complainant is judged to be unreasonably persistent or vexatious and any restrictions imposed on the Council's contact with him/her, will be recorded and notified to those who need to know within the Council. Information about the complaint will not normally be included in such notification. For further information, please refer to the guidelines.

## 7. Review

- 7.1 The status of the complainant judged to be unreasonably persistent or vexatious will be reviewed by the relevant Director after six months and at the end of every subsequent six months within the period during which the Policy is applied.

## 8. Referring unreasonably persistent or vexatious complainants to another body

- 8.1 In some cases, relations between councils and unreasonably persistent or vexatious complainants break down significantly while complaints are under investigation and there is little prospect of achieving a satisfactory outcome. In such circumstances, there is often little purpose in following all the stages of the Corporate Complaints Procedure and where this occurs, the Ombudsman may be prepared to consider the complainant's complaint before the Corporate Complaints Procedure has run its course.
- 8.2 In relation to alleged breaches of the Code of Conduct by Borough Councillors, Parish/Town Councillors and Co-opted Members, although the Assessment Sub-committee must consider every new complaint received in relation to alleged breaches of the Code, if the Monitoring Officer advises the Sub-committee that the complainant is unreasonably persistent or vexatious, the Sub-committee may refer the complaint to the Standards Board for England, in accordance with the Procedure for Local Assessment of Complaints – Code of Conduct - Councillors and Co-opted Members. This process applies equally to the Review Sub-committee.



## Guidelines on Unreasonably Persistent and/or Vexatious Complainants

### 1. Introduction

- 1.1 The Council must expect some degree of pressure from its customers, if they believe that the Council has failed in its service to them or there have been unacceptable delays in the progress of their complaints. Such pressure may be persistent, and in many circumstances, this is reasonable and acceptable.
- 1.2 However, if a complainant behaves in a way that is unreasonably persistent and/or vexatious, the Council will follow its Policy on Unreasonably Persistent and/or Vexatious Complainants. These guidelines accompany that Policy.

### 2. Features of an unreasonably persistent and/or vexatious complainant

- 2.1 The following list describes some of the features of a complainant who may be unreasonably persistent and/or vexatious. The list is not exhaustive, nor does one single feature on its own necessarily imply that the person will be considered as being in this category. The list merely includes examples of the behaviour and actions that the Council experiences, either individually or in combination. An unreasonably persistent and/or vexatious complainant may:
  1. have insufficient or no grounds for their complaint and be making the complaint only to annoy (or for reasons that he/she does not admit or make obvious);
  2. refuse to specify the grounds of a complaint despite offers of assistance;
  3. refuse to co-operate with the complaints investigation process while still wishing their complaint to be resolved;
  4. refuse to accept that issues are not within the remit of the Corporate Complaints Procedure or other complaints process despite having been provided with information about the scope of the Procedure or process;
  5. refuse to accept that issues are not within the power of the Council to investigate, change or influence (examples could be a complaint about a private car park, or something that is the responsibility of another organisation);
  6. insist on the complaint being dealt with in ways which are incompatible with the Corporate Complaints Procedure or other complaints process or with good practice (insisting, for instance, that there must not be any written record of the complaint);
  7. make what appear to be groundless complaints about the staff dealing with the complaints, and seek to have them dismissed or replaced;
  8. make an unreasonable number of contacts with the Council, by any means (telephone, letter, fax, email or in person) in relation to a specific complaint or complaints (it is impracticable to suggest a number in these guidelines, so staff must use their own judgement to determine what an unreasonable number is in any one case);
  9. make persistent and unreasonable demands or expectations of staff and/or the complaints process after the unreasonableness has been explained in writing (or in another appropriate form) to the complainant (an example of this could be a complainant who insists on immediate responses to numerous, frequent and/or complex letters, faxes, telephone calls or emails);
  10. threaten, harass, verbally abuse, use physical violence and repetitive language of an obsessive nature to intimidate staff and/or Councillors dealing with their complaint and/or their families;
  11. raise subsidiary or new issues whilst a complaint is being addressed that were not part of the complaint at the start of the complaints process;
  12. introduce trivial or irrelevant new information whilst the complaint is being investigated and expect this to be taken into account and commented on;



## Dartford Borough Council

13. change the substance or basis of the complaint without reasonable justification whilst the complaint is being addressed;
14. deny statements he/she made at an earlier stage in the complaints process;
15. electronically record meetings and conversations without the prior knowledge and consent of the other person involved;
16. adopt an excessively 'scattergun' approach, for instance, pursuing a complaint or complaints not only with the Council, but at the same time with a Member of Parliament, other councils, councillors of this and other councils, the Council's external auditor, the police, lawyers and the Local Government Ombudsman;
17. refuse to accept the outcome of the complaints process after its conclusion, repeatedly arguing the point, complaining about the outcome, and/or denying that an adequate response has been given;
18. make the same complaint repeatedly, perhaps with minor differences, after the complaints process has been concluded and insist that the minor differences make these 'new' complaints which should be put through the full complaints procedure;
19. persistently approach the Council through different routes about the same issue;
20. persist in seeking an outcome which the Council has explained is unrealistic for legal or policy (or other valid) reasons;
21. refuse to accept documented evidence as factual;
22. complain about or challenge an issue based on a historic and irreversible decision or incident;
23. refuse to accept documented evidence;
24. refuse to identify the precise issues which the complainant wishes to have investigated;
25. refuse to let the matter rest once the complaints process has been exhausted;
26. displaying unreasonable demands or expectations e.g. insisting on responses to complaints or enquiries being provided more urgently than is reasonable or normal recognised practice;
27. ulterior motives in lodging a complaint;
28. combination one or more of these features.

### 3. Being reasonable

- 3.1 Raising legitimate queries or criticisms of a complaints process as it progresses, for example if agreed timescales are not met, should not in itself lead to someone being regarded as a vexatious or an unreasonably persistent complainant.
- 3.2 Similarly, the fact that a complainant is unhappy with the outcome of a complaint and seeks to challenge it once, or more than once, should not necessarily cause him/her to be labelled vexatious or unreasonably persistent.
- 3.3 It may be helpful to both parties if the complainant had a representative.
- 3.4 If the complainant has specific needs, the Council may suggest a number of support options such as the Royal National Institute for the Blind, Citizens Advice Bureau, Age Concern, and Language Line, which the complainant can contact for advice and help.

### 4. Decision-making

- 4.1 The decision to declare a complainant as unreasonably persistent and/or vexatious should be made by the relevant Director in consultation with the Head of Legal Services or another Director, where the Head of Legal Services is conflicted out, because of involvement in the complaint or with the complainant. A written note of the considerations and decisions should be maintained.



- 4.2 If more than one Department is being contacted by the complainant, perhaps with different complaints, the Corporate Complaints Officer should consider:
1. setting up a strategy meeting to agree a cross-Departmental approach, and
  2. nominating a key officer to co-ordinate the Council's response(s).

## 5. Options to restrict a complainant's contact with the Council, and other actions

- 5.1 The options the Council is most likely to consider are:
1. requesting contact to be in a particular form (for example, letters only);
  2. requiring contact to take place with one named member of staff only;
  3. restricting telephone calls to specified days/times/duration;
  4. requiring any personal contact to take place in the presence of an appropriate witness;
  5. letting the complainant know that the Council will not reply or acknowledge any further contact from him/her on the specific topic of that complaint (in this case, a designated member of staff should be identified who will read future correspondence);
  6. banning a complainant from one or more Council premises.
- 5.2 These options are not exhaustive and often local or other factors will be relevant in deciding what might be appropriate action. For instance, any arrangements for limiting a complainant's contact must take account of the complainant's individual circumstances, bearing in mind such issues as age, disability, gender, race and religion or belief etc.

## 6. Actions after a complainant has been judged to be unreasonably persistent or vexatious

- 6.1 The fact that a complainant is judged to be unreasonably persistent or vexatious, requires any restrictions imposed on the Council's contact with him/her to be recorded and:
1. held centrally by the Corporate Complaints Officer;
  2. notified to all Directors, Managers, Departmental Complaints Officers, Communications Manager, Customer Services Manager and relevant staff as appropriate;
  3. personal details about the complainant and about the complaint will be managed and stored appropriately in line with data protection and records management principles and procedures.

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## Equalities and Diversity

Dartford Borough Council aims to eliminate discrimination in respect of sex, colour, race, nationality, ethnic group, regional or national origin, age, marital status, disability, political or religious belief, sexuality or class and will ensure that its complaints' process is free from bias or discrimination and that all those involved in the process are treated fairly and with respect. The complaints' process will be conducted in a manner appropriate to the individual, whatever their background

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We want to ensure that your needs are met. If you need this information on audio tape, in Braille, large print, any other format or interpreted in a language other than English, please contact Customer Services 01322 343434 or [customer.services@dartford.gov.uk](mailto:customer.services@dartford.gov.uk)

**LOCAL GOVERNMENT ACT 1972  
SCHEDULE 12A: PARTS 1-3  
STANDING ORDER 46**

**ACCESS TO INFORMATION: CATEGORIES OF EXEMPT INFORMATION**

Category	Qualification
<p>1. Information relating to an individual</p>	<p>Information is not exempt information unless it relates to an individual of that description in the capacity indicated by the description i.e. it must relate to and be recognisable as referring to a particular living individual in the roles indicated.</p> <p>Information is only exempt:</p> <ul style="list-style-type: none"> <li>(a) where disclosure is prohibited by statute; or</li> <li>(b) where disclosure might involve providing personal information about individuals; or</li> <li>(c) where disclosure might breach a duty of confidentiality; and</li> <li>(d) in all the circumstances of the case, the public interest in not disclosing the information outweighs the public interest in disclosing the information.</li> </ul>
<p>2. Information which is likely to reveal the identity of an individual</p>	<p>Information is not exempt information unless it relates to an individual of that description in the capacity indicated by the description i.e. it must relate to and be recognisable as referring to a particular living individual in the roles indicated.</p> <p>Information is only exempt:</p> <ul style="list-style-type: none"> <li>(a) where disclosure is prohibited by statute; or</li> <li>(b) where disclosure might involve providing personal information about individuals; or</li> <li>(c) where disclosure might breach a duty of confidentiality; and</li> <li>(d) in all the circumstances of the case, the public interest in not disclosing the information outweighs the public interest in disclosing the information.</li> </ul>
<p>3. Information relating to the financial or business affairs of any particular person (including the authority holding the information)</p> <p>'financial or business affairs' includes contemplated, as well as past or current, activities</p> <p>This category will include commercial and contractual interests</p>	<p>Information is not exempt information if it is required to be registered by law e.g. Companies Act 1985, the Charities Act 1993 etc</p> <p>Information is only exempt if and for so long as:</p> <ul style="list-style-type: none"> <li>(a) disclosure of the amount involved would be likely to give advantage to a person entering into or seeking to enter into a contract with the Council in respect of property, goods or services whether the advantage would arise as against the Council or as against other persons; or</li> <li>(b) disclosure would prejudice the efficiency and effectiveness of the use of Council resources; or</li> <li>(c) disclosure of trade secrets and other information would, or would likely, prejudice the commercial interests of any person, including the Council; and</li> <li>(d) in all the circumstances of the case, the public interest in not disclosing the information outweighs the public interest in disclosing the information.</li> </ul>
<p>4. Information relating to any consultations or negotiations or contemplated consultations or negotiations, in connection with any labour relations matters arising between the authority or a minister of the crown and employees of, or office-holders under, the authority</p> <p>'Labour relations matters' are as specified in paragraphs (a) to (g) of Section 29(1) of the Trade Unions and Labour Relations Act 1974 i.e. matters which may be the subject of a trade dispute</p> <p>'employee' means a person employed under a contract of service</p> <p>'office-holder' means the holder of any paid office appointments which are or may be made or confirmed by the authority or by any joint board on which the authority is represented or by any person who holds any such office or is an employee of the authority</p>	<p>Information is only exempt if and for so long as its disclosure to the public:</p> <ul style="list-style-type: none"> <li>(a) would prejudice the Council in those or any other consultations or negotiations in connection with a labour relations matter; and</li> <li>(b) in all the circumstances of the case, the public interest in not disclosing the information outweighs the public interest in disclosing the information.</li> </ul>
<p>5. Information in respect of which a claim to legal professional privilege could be maintained in legal proceedings</p>	<p>Information is only exempt:</p> <ul style="list-style-type: none"> <li>(a) where a claim of legal professional privilege could be maintained in legal proceedings e.g. correspondence such as legal advice and assistance between the Council's Legal Services and its client; and</li> <li>(b) in all the circumstances of the case, the public interest in not disclosing the information outweighs the public interest in disclosing the information.</li> </ul>

Category	Qualification
6. Information which reveals that the authority proposes –  (a) to give under any enactment a notice under or by virtue of which requirements are imposed on a person, or  (b) to make an order or direction under any enactment	Information is exempt only if and so long as: (a) disclosure to the public might afford an opportunity to a person affected by the notice, order or direction to defeat the purpose or one of the purposes for which the notice order or direction is to be given or made; and  (b) in all circumstances of the case, the public interest in not disclosing the information outweighs the public interest in disclosing the information.
7. Information relating to any action taken or to be taken in connection with the prevention, investigation or prosecution of crime	Information is only exempt if its disclosure would, or would be likely to, prejudice- (a) criminal investigations and proceedings; or (b) the apprehension or prosecution of offenders; or (c) the administration of justice; or (d) the assessment or collection of any tax or duty or of any imposition of a similar nature; or (e) regulatory enforcement; or (f) any civil proceedings; or (g) Health and safety; or (h) information obtained from confidential sources; and (i) in all the circumstances of the case, the public interest in not disclosing the information outweighs the public interest in disclosing the information.
In addition to the categories referred to above, the following categories will apply to the proceedings of the Standards Committee and its Sub-Committee only in connection with the investigation and consideration of an allegation(s) of a breach of the Council's Member Code of Conduct	
7A. Information which is subject to any obligation of confidentiality	See guidance notes D and E below.
7B. Information which relates in any way to matters concerning national security	Information is only exempt if its disclosure would, or would be likely to, prejudice- (a) matters concerning national security; and (b) in all the circumstances of the case, the public interest in not disclosing the information outweighs the public interest in disclosing the information.
7C. The deliberations of the Standards Committee or its Sub-committee in reaching any finding on a matter relating to the conduct of an elected or Co-opted Member and Parish/Town Councillors	Information is only exempt if its disclosure would, or would be likely to, prejudice- (a) matters concerning national security; and (b) in all the circumstances of the case, the public interest in not disclosing the information outweighs the public interest in disclosing the information.

## HUMAN RIGHTS

Article 6 of the European Convention on Human Rights provides that the public may be excluded from all or part of the Committee hearing if it is in the interest(s) of:

- (a) morals;
- (b) public order;
- (c) justice;
- (d) natural security in a democratic society; or
- (e) protecting young people under 18 and the private lives of anyone involved.

## **STANDARDS BOARD FOR ENGLAND GUIDANCE ON MEMBER SUSPENSIONS**

### **Suspensions and what they mean for Members**

A Member who is suspended continues to be a Councillor. They can quite properly refer to themselves as a Councillor or as an elected Member, although they should also make it clear, that they are currently suspended.

### **Full suspensions**

A Member suspended by the Adjudication Panel for England or the Standards Committee, is not able to take part in the formal business of the Council during the period of the suspension. This means that they should not take part in any formal business of the Council, they should not use or have access to Council facilities and they should not receive their Members' allowance. They also should not meet Council officers to conduct Council business.

### **Partial suspensions**

A Member who is subject to partial suspension, may not, during the period of suspension, exercise the particular functions or responsibilities from which they are suspended. The Adjudication Panel for England or the Standards Committee will have described precisely what particular functions are proscribed.

A partial suspension enables the Adjudication Panel for England or the Standards Committee to tailor a sanction to the particular breach, while still allowing the Member to carry out other functions. For instance, a Member who failed to uphold the Code of Conduct at the Development Control Board, could be suspended from taking part in the Board's meetings for a certain period. Or a Member who bullied licensing officers about an application, might be barred from contact with officers of the Licensing Department for a certain period.

During the period of partial suspension, the Member will not receive their Members' allowance relating to areas in which they are suspended from acting.

### **Make the suspended status clear**

Members should put 'suspended' after their name when referring to themselves in writing as a Councillor, and notify constituents when contacted by them on constituency business. This is to ensure that all concerned are aware that the Member is under suspension and unable to perform Council duties. A suspended Member must not purport to act as a representative of the Council.

### **Make arrangements for another Member to handle their constituency work**

With help from Council officers, suspended Members can make arrangements for other ward Members — or, in the case of a single - Member ward, neighbouring ward Members — to take over their constituency work for the duration of the suspension, ensuring constituents continue to be democratically represented.

### **Abide by the appropriate provisions of the Code of Conduct**

A suspended Member with a prejudicial interest in a particular matter should not attend a Council meeting where that matter is discussed, even just as a member of the public in the public gallery.

However, a suspended Member without a prejudicial interest can attend Council meetings in the same way as ordinary members of the public.

### **What can the Council do when a Member is suspended?**

Officers and Councillors should be informed of a Member's suspension and advised of the suspended Member's rights and obligations, as detailed above. The Council should also help the Member make arrangements for another Member, either from his/her ward or a neighbouring ward, to take over constituency work. The Council may also notify the public in the Borough that the Member is suspended and unable to perform official Council duties until the end of the suspension.

Once the suspension has ended, the Member is free to resume his/her duties in full, as a Councillor.

## APPLICATION FOR PERMISSION TO APPEAL

LOCAL GOVERNMENT ACT 2000

The Local Authorities (Code of Conduct) (Local Determination) Regulations 2003

*The request for permission to appeal has to be made within **21 days** of the member's receipt of the Standards Committee **full written** decision*

<b>1</b>	<b>Your name and address</b>	
<b>2</b>	<b>Name and address of local authority or other body of which you are a member</b>	
<b>3</b>	<b>Date of Standards Committee decision against which you seek to appeal</b>	<i>(The decision itself should be attached to this form)</i>
<b>4</b>	<b>Date on which you received Standards Committee <u>full written</u> decision</b>	<i>(The covering letter sent with the full decision should be attached to this form)</i>
<b>5</b>	<b>Name and address of Standards Committee</b>	
<b>6</b>	<b>Do you dispute that you failed to comply with the provisions of the Code of Conduct as determined by the Standards Committee</b>	<b>YES / NO</b> <i>(if yes, please give your reasons)</i>

7	Do you wish to appeal against the sanction imposed by the Standards Committee?	YES / NO <i>(if yes please give your reasons)</i>
8	If permission to appeal is granted do you agree to the Appeal being determined by way of written representations?	YES / NO
Return form to: The Adjudication Panel for England 23 Victoria Avenue, Harrogate, N Yorkshire. HG1 5RD		

Your signature .....

Date.....

**President's Decision:**

Permission	Granted / Denied
Reason if permission refused:	

Signed .....

Date .....