

19 August 2020 at 7.00 pm

This meeting will be held virtually via Zoom  
and livestreamed here

[https://www.youtube.com/channel/UCIT1f\\_F50fvTzxjZk6Zqn6g](https://www.youtube.com/channel/UCIT1f_F50fvTzxjZk6Zqn6g)

Despatched: 11.08.20



# Standards Hearing Sub Committee

## Membership:

Chairman, Cllr. Ball; Vice-Chairman, Cllr. Raikes  
Cllr. Grint

## Agenda

There are no fire drills planned. If the fire alarm is activated, which is a continuous siren with a flashing red light, please leave the building immediately, following the fire exit signs.

	Pages	Contact
1. Apologies for Absence		
2. Declarations of Interest		
Consideration of Exempt Information		
Recommendation: That, under section 100A(4) of the Local Government Act 1972, the public be excluded from the meeting when considering Agenda Item 3 and annexes 1,2, and 4 -7, on the grounds that likely disclosure of exempt information is involved as defined by Schedule 12A, paragraph 1 (Information relating to any individual).		
3. Member Complaint 20.005	(Pages 1 - 80)	Martin Goodman Tel: 01732227245

If you wish to obtain further factual information on any of the agenda items listed above, please contact the named officer prior to the day of the meeting.

Should you need this agenda or any of the reports in a different format, or have any other queries concerning this agenda or the meeting please contact Democratic Services on 01732 227000 or [democratic.services@sevenoaks.gov.uk](mailto:democratic.services@sevenoaks.gov.uk).

This page is intentionally left blank

Document is Restricted

This page is intentionally left blank

Document is Restricted

This page is intentionally left blank

Document is Restricted

This page is intentionally left blank

## DUNTON GREEN PARISH COUNCIL CODE OF CONDUCT

### **Introduction**

Pursuant to section 27 of the Localism Act 2011, Dunton Green Parish Council ('the Council') has adopted this Code of Conduct to promote and maintain high standards of behaviour by its members and co-opted members whenever they conduct the business of the Council, including the business of the office to which they were elected or appointed, or when they claim to act or give the impression of acting as a representative of the Council.

This Code of Conduct is based on the principles of selflessness, integrity, objectivity, accountability, openness, honesty, and leadership.

### **Definitions**

For the purposes of this Code, a 'co-opted member' is a person who is not a member of the Council but who is either a member of any committee or sub-committee of the Council, or a member of, and represents the Council on any joint committee or joint sub-committee of the Council, and who is entitled to vote on any question that falls to be decided at any meeting of that committee or sub-committee.

For the purposes of this Code, a 'meeting' is a meeting of the Council, any of its committees, sub-committees, joint committees or joint sub-committees.

For the purposes of this Code, and unless otherwise expressed, a reference to a member of the Council includes a co-opted member of the Council.

### **Member obligations**

When a member of the Council acts, claims to act or gives the impression of acting as a representative of the Council, he/she has the following obligations.

1. He/she shall behave in such a way that a reasonable person would regard as respectful.
2. He/she shall not act in a way which a reasonable person would regard as bullying or intimidatory.
3. He/she shall not seek to improperly confer an advantage or disadvantage on any person.
4. He/she shall use the resources of the Council in accordance with its requirements.
5. He/she shall not disclose information which is confidential or where disclosure is prohibited by law.

### ***Registration of interests***

6. Within 28 days of this Code being adopted by the Council, or the member's election or the co-opted member's appointment (where that is later), he/she shall register with the Monitoring Officer the interests which fall within the categories set out in Appendices A and B.
7. Upon the re-election of a member or the re-appointment of a co-opted member, he/she shall within 28 days re-register with the Monitoring Officer any interests in Appendices A and B.

8. A member shall register with the Monitoring Officer any change to interests or new interests in Appendices A and B within 28 days of becoming aware of it.
9. A member need only declare the existence but not the details of any interest which the Monitoring Officer agrees is a 'sensitive interest'. A sensitive interest is one which, if disclosed on a public register, could lead the member or a person connected with the member to be subject to violence or intimidation.

***Declaration of interests at meetings***

10. Where a matter arises at a meeting which relates to an interest in Appendix A the member shall not participate in a discussion or vote on the matter. He/she only has to declare what his/her interest is if it is not already entered in the member's register of interests or if he/she has not notified the Monitoring Officer of it.
11. Where a matter arises at a meeting which relates to an interest in Appendix A which is a sensitive interest, the member shall not participate in a discussion or vote on the matter. If it is a sensitive interest which has not already been disclosed to the Monitoring Officer, the member shall disclose he/she has an interest but not the nature of it.
12. Where a matter arises at a meeting which relates to an interest in Appendix B, the member shall not vote on the matter. He/she may speak on the matter only if members of the public are also allowed to speak at the meeting.
13. A member only has to declare his/her interest in Appendix B if it is not already entered in his/her register of interests or he/she has not notified the Monitoring Officer of it or if he/she speaks on the matter. If he/she holds an interest in Appendix B which is a sensitive interest not already disclosed to the Monitoring Officer, he/she shall declare the interest but not the nature of the interest.

14. Where a matter arises at a meeting which relates to a financial interest of a friend, relative or close associate (other than an interest in Appendix A), the member shall disclose the nature of the interest and not vote on the matter. He/she may speak on the matter only if members of the public are also allowed to speak at the meeting. If it is a 'sensitive interest' the member shall declare the interest but not the nature of the interest.

### **Dispensations**

15. On a written request made to the Council's proper officer, the Council may grant a member a dispensation to participate in a discussion and vote on a matter at a meeting even if he/she has an interest in Appendices A and B if the Council believes that the number of members otherwise prohibited from taking part in the meeting would impede the transaction of the business; or it is in the interests of the inhabitants in the Council's area to allow the member to take part or it is otherwise appropriate to grant a dispensation.

**Appendix A**

Interests described in the table below.

<b>Subject</b>	<b>Description</b>
Employment, office, trade, profession or vocation	Any employment, office, trade, profession or vocation carried on for profit or gain.
Sponsorship	Any payment or provision of any other financial benefit (other than from the Council) made to the member during the 12 month period ending on the latest date referred to in paragraph 6 above for expenses incurred by him/her in carrying out his/her duties as a member, or towards his/her election expenses.
	This includes any payment or financial benefit from a trade union within the meaning of the Trade Union and Labour Relations (Consolidation) Act 1992.
Contracts	Any contract made between the member or his/her spouse or civil partner or the person with whom the member is living as if they were spouses/civil partners (or a firm in which such person is a partner, or an incorporated body of which such person is a director* or a body that such person has a beneficial interest in the securities of*) and the Council —
	(a) under which goods or services are to be provided or works are to be executed; and
	(b) which has not been fully discharged.
Land	Any beneficial interest in land which is within the area of the Council. 'Land' excludes an easement, servitude, interest or right in or over land which does not give the member or his/her spouse or civil partner or the person with whom the member is living as if they were spouses/civil partners (alone or jointly with another) a right to occupy or to receive income.
Licences	Any licence (alone or jointly with others) to occupy land in the area of the Council for a month or longer.
Corporate tenancies	Any tenancy where (to the member's knowledge)—
	(a) the landlord is the Council; and
	(b) the tenant is a body that the member, or his/her spouse or civil partner or the person with whom the member is living as if they were spouses/civil partners is a partner of or a director* of or has a beneficial interest in the securities* of.
Securities	Any beneficial interest in securities* of a body where—
	(a) that body (to the member's knowledge) has a place of business or land in the area of the Council; and
	(b) either—
	(i) the total nominal value of the securities* exceeds £25,000 or one hundredth of the total issued share capital of that body; or
	(ii) if the share capital of that body is of more than one class, the total nominal value of the shares of any one class in which the member, or his/her spouse or civil partner or the person with whom the member is living as if they were spouses/civil partners has a beneficial interest exceeds one hundredth of the total issued share capital of that class.

\*'director' includes a member of the committee of management of an industrial and provident society.

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

## Appendix B

An interest which relates to or is likely to affect:

- (i) any body of which the member is in a position of general control or management and to which he/she is appointed or nominated by the Council;
  
- (ii) any body—
  - (a) exercising functions of a public nature;
  - (b) directed to charitable purposes; or
  - (c) one of whose principal purposes includes the influence of public opinion or policy (including any political party or trade union)of which the member of the Council is a member or in a position of general control or management;
  
- (iii) any gifts or hospitality worth more than an estimated value of £50 which the member has received by virtue of his or her office.

Document is Restricted

This page is intentionally left blank

Document is Restricted

This page is intentionally left blank

Document is Restricted

This page is intentionally left blank

Document is Restricted

This page is intentionally left blank

## APPENDIX S: Annexe 3

### STANDARDS HEARINGS SUB COMMITTEE PROCEDURE

The complainant and the Subject Member can request that the hearing takes place by way of written submissions rather than a formal hearing undertaken by the Standards Hearings Sub Committee. This can only take place with the agreement of both the complainant and Subject Member.

1. Rules of procedure
  - 1.1 The Standards Hearings Sub Committee consists of three voting elected Members drawn from the Standards Committee.
  - 1.2 The quorum for a meeting of the Standards Hearings Sub Committee is three elected Members.
  - 1.3 The Independent Person's view must be sought and taken into consideration before the Standards Hearings Sub Committee takes any decision on whether the Subject Member's conduct constitutes a failure to comply with the Code of Conduct and as to any sanction to be taken following a finding of failure to comply with the Code of Conduct. The Independent Person must be present throughout the hearing (but not during the deliberations of the Standards Hearings Sub Committee] in private) or may submit their views on the complaint to the Standards Hearings Sub Committee in writing.
  - 1.4 The legal requirements for publishing agendas, minutes and calling meetings, will apply to the Standards Hearings Sub Committee. The hearing will be held in public no earlier than 14 working days after the Monitoring Officer has copied the Investigating Officer's final report to the complainant and the Subject Member. Schedule 12A Local Government Act 1972 (as amended) will be applied where it is necessary to exclude the public and press from meetings of the Standards Hearings Sub Committee because it is likely that confidential or exempt information will be disclosed.
  - 1.5 All matters/issues before the Standards Hearings Sub Committee will be decided by a simple majority of votes cast.
  - 1.6 Where the Subject Member fails to attend the Standards Hearings Sub Committee and where the Standards Hearings Sub Committee is not satisfied with their explanation for their absence from the hearing, the Standards Hearings 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. If the Standards Hearings Sub Committee is satisfied with the Subject Member's reasons for not attending the hearing they may adjourn the hearing to

## Agenda Item 3

another date or, may resolve in exceptional circumstances, to proceed with the hearing on the basis that it is in the public interest to hear the allegations expeditiously.

2. Right to be accompanied by a representative
  - 2.1 The Subject Member may choose to be accompanied and/or represented at the Standards Hearings Sub Committee by a fellow councillor, friend or colleague or legal counsel.
3. The conduct of the Standards Hearings Sub Committee
  - 3.1 Subject to paragraph 3.2 below, the order of business will be as follows:
    - (a) appointment of a chairman
    - (b) apologies for absence;
    - (c) declarations of interests;
    - (d) in the absence of the Subject Member, consideration as to whether to adjourn or to proceed with the hearing (refer to paragraph 1.6 above);
    - (e) introduction by the Chairman, of members of the Standards Hearings Sub Committee, the Independent Person, the Monitoring Officer, Investigating Officer, complainant and the Subject Member and their representative;
    - (f) to receive representations from the Monitoring Officer and/or Subject Member as to whether any part of the hearing should be held in private and/or whether any documents (or parts thereof) should be withheld from the public/press;
    - (g) to determine whether the public/press are to be excluded from any part of the meeting and/or whether any documents (or parts thereof) should be withheld from the public/press.
  - 3.2 The Chairman may exercise their discretion and amend the order of business, where they consider that it is expedient to do so in order to secure the effective and fair consideration of any matter.
  - 3.3 The Standards Hearings Sub Committee may adjourn the hearing at any time.
  - 3.4 Presentation of the complaint
    - (a) The Investigating Officer presents their report including any documentary evidence or other material and calls any complainant witnesses;
    - (b) The Standards Hearings Sub Committee may question the Investigating Officer upon the content of his/her report and any complainant witnesses.

3.5 Presentation of the Subject Member's case

- (a) The Subject Member or their representative presents their case and calls their witnesses;
- (b) The Standards Hearings Sub Committee may question the Subject Member and any witnesses called by the Subject Member.

3.6 Views/Submissions of the Independent Person

The Chairman will invite the Independent Person to express their view on whether they consider that on the facts presented to the Standards Hearings Sub Committee, there has been a breach of the Code of Conduct or no breach as the case may be.

3.7 Deliberations of the Standards Hearings Sub Committee

- 3.7.1
- (a) The Standards Hearings Sub Committee will adjourn the hearing and deliberate in private (assisted on matters of law by a legal advisor) to consider whether on the facts found, the Subject Member has failed to comply with the Code of Conduct.
  - (b) The Standards Hearings Sub Committee will consider the views expressed by the Independent Person prior to reaching a decision(s), including any views of the Independent Person on sanction(s) to be applied [and/or recommendations to the District or Town/Parish Council or Monitoring Officer.
  - (c) The Standards Hearing Sub Committee when making its decision will consider the criteria set out in Annexe 1 - Assessment test.
  - (d) Where the complaint has a number of aspects, the Standards Hearings Sub Committee may reach a finding, apply a sanction and/or make a recommendation on each aspect separately.
  - (e) The Standards Hearings Sub Committee will make its decision on the balance of probability, based on the evidence before it during the hearing.
  - (f) The Standards Hearings Sub Committee may at any time come out of private session and reconvene the hearing in public, in order to seek additional evidence from the Investigating Officer, the Subject Member or the witnesses. If further information to assist the Standards Hearing Sub Committee cannot be presented, then the Standards Hearing Sub Committee may adjourn the hearing and issue directions as to the additional evidence required and by whom.
  - (g) If evidence presented to the Standards Hearings Sub Committee highlights other potential breaches of the District or Town/Parish Council's Code of Conduct, then the Chairman will outline the

## Agenda Item 3

Standards Hearing Sub Committee's concerns and recommend that the matter be referred to the Monitoring Officer as a 'new complaint'.

- 3.7.2 (a) Having deliberated on its decision and/or recommendation(s) and the application of any sanction(s), the Standards Hearings Sub Committee will reconvene the hearing in public and the Chairman will announce that on the facts presented to the Standards Hearing Sub Committee, the Standards Hearing Sub Committee considers that there has been a breach of the Code of Conduct, or no breach, as the case may be. The Chairman will announce the sanction(s) the Sub Committee is minded to apply and/or any recommendation(s) to the District or Town/Parish Council and/or Monitoring Officer.
- (b) The Chairman will invite the Independent Person, the Subject Member and the Monitoring Officer to make their representations as to whether any sanction(s) should be taken and what form any sanction(s) should take. The Independent Person will be invited to express their view on any recommendation(s) to the District or Town/Parish Council or Monitoring Officer.

Having heard the representations/views, the Standards Hearings Sub Committee will adjourn and deliberate in private.

- 3.7.3 (a) Having deliberated on its decision and/or recommendation(s) and the application of any sanction(s), and having taken into account the Independent Person's views, the Standards Hearings Sub Committee will reconvene the hearing in public and the Chairman will announce:
- (i) the Sub Committee's decision that the Subject Member has failed to comply with the Code of Conduct; or, that the Subject Member has not failed to comply with the Code of Conduct and the principal reasons for the decision;
  - (ii) the sanction(s) to be applied;
  - (iii) whether any recommendations will be made to the District or Town/Parish Council;
  - (iv) that the Sub Committee's full decision and reasons will be issued by the Monitoring Officer, in writing, within 10 working days following the close of the hearing;
  - (v) that the decision will be published on the District Council's website; and
  - (vi) that there is no right of appeal against the Sub Committee's decision(s) and/or recommendation(s).
- 3.7.4 The Standards Hearings Sub Committee's decision and/or recommendations will be published in accordance with paragraph 5 of this Annexe 3.

4. Range of possible sanctions
  - 4.1 Subject to paragraph 4.4 below, where the Standards Hearings Sub Committee determines that the Subject Member has failed to comply with the Code of Conduct, any one or more of the sanctions set out in paragraph 1.5 of the document entitled “Arrangements for dealing with Code of Conduct Complaints under the Localism Act 2011”.
  - 4.2 The Standards Hearings Sub Committee has no power to suspend or disqualify the Subject Member or to withdraw basic or special responsibility allowances.
  - 4.3 The Standards Hearings Sub Committee may specify that any sanction take effect immediately or take effect at a later date and that the sanction be time limited.
  - 4.4 When deciding whether to apply one or more sanctions referred to in paragraph 4.1 above, the Standards Hearings Sub Committee will ensure that the application of any sanction is reasonable and proportionate to the Subject Member’s behaviour and that any sanction does not unduly restrict the Subject Member’s ability to perform the functions of a councillor. The Standards Hearings Sub Committee will consider the following questions along with any other relevant circumstances or other factors specific to the local environment and/or the Conventions ‘proportionality’ requirements:
    - (a) What was the Subject Member’s intention and did they know that they were failing to follow the District or Town/Parish Council’s Code of Conduct?
    - (b) Did the Subject Member receive advice from officers before the incident and was that advice acted on in good faith?
    - (c) Has there been a breach of trust?
    - (d) Has there been financial impropriety, e.g. improper expense claims or procedural irregularities?
    - (e) What was the result/impact of failing to follow the District or Town/Parish Council’s Code of Conduct?
    - (f) How serious was the incident?
    - (g) Does the Subject Member accept that they were at fault?
    - (h) Did the Subject Member apologise to the relevant persons?
    - (i) Has the Subject Member previously been reprimanded or warned for similar relevant misconduct?
    - (j) Has there been a relevant previous breach of the District or Town/Parish Council’s Code of Conduct?
    - (k) Is there likely to be a repetition of the incident?
    - (l) Was it a deliberate breach of the code or was it inadvertent (i.e. the Member thought that he/she was acting in a private capacity)? If capacity is an issue the Standards Hearings Sub

## Agenda Item 3

Committee will need to give reasons for its decision that the Subject Member was or was not acting publicly.

5. Publication and notification of the Standards Hearings Sub Committee's decision(s) and/or recommendation(s)
  - 5.1 Within 10 working days of the Standards Hearings Sub Committee's announcement of its decision and/or recommendations, the Monitoring Officer will publish the name of the Subject Member and a summary of the Standards Hearings Sub Committee's decision and/or recommendations and reasons for the decision and/or recommendations on the District Council's website.
  - 5.2 Within 10 working days of the announcement of the Standards Hearings Sub Committee's decision, the Monitoring Officer will provide a full written decision and the reasons for the decision including any recommendations in the format of the decision notice template annexed to this Annexe 3 to:
    - (a) the Subject Member;
    - (b) the Complainant;
    - (c) the Clerk to the Town/Parish Council;
  - 5.3 The Monitoring Officer will report the Standards Hearings Sub Committee's decision and/or recommendations to the next ordinary meeting of the Standards Committee for information.

**TEMPLATE - DECISION NOTICE (of Standards Hearings Sub Committee)**

Complaint No: xxxx

On [insert date], the Standards Hearings Sub Committee of The Sevenoaks District Council considered a report of an investigation into the alleged conduct of Councillor [insert name of councillor], a member of [insert authority name]. A general summary of the complaint is set out below.

Complaint summary

[Summarise complaint in numbered paragraphs as set out in the Investigating Officer's report to the Standards Hearings Sub Committee]

Consultation with Independent Person

[Summarise the Independent Person's views in numbered paragraphs]

Findings

After considering the submissions of the parties to the hearing and the views of the Independent Person, the Standards Hearings Sub Committee reached the following decision(s):

[Summarise the finding of facts and the Standards Hearings Sub Committee's decision against each finding of fact in numbered paragraphs as set out in the Investigating Officer's report to the Standards Hearings Sub Committee, but substitute the Investigating Officer for the Standards Hearings Sub Committee. Please note that the Standards Hearings Sub Committee's findings may differ from that of the Investigating Officer]

The Standards Hearings Sub Committee also made the following recommendation(s)

[Detail recommendations]

Sanctions applied

The breach of the [insert authority name] Code of Conduct warrants a [detail sanctions applied].

Appeal

There is no right of appeal against the Standards Hearings Sub Committee's decision.

Notification of decision

This decision notice is sent to the:

- Councillor [name of councillor]
- Complainant
- Clerk to the xxxx Parish/Town Council;

## Agenda Item 3

### Additional help

If you need additional support in relation to this decision notice or future contact with the District Council, please let us know as soon as possible. If you have difficulty reading this notice, we can make reasonable adjustments to assist you, in line with the requirements of the Equality Act 2010. We can also help if English is not your first language. Please refer to the attached Community Interpreting Service leaflet or contact our Customer Services on 01732 227000 or email [information@sevenoaks.gov.uk](mailto:information@sevenoaks.gov.uk). We welcome calls via Typetalk

Signed:

Date

Print name:

Chairman of the Standards Hearings Sub Committee Sevenoaks District Council,  
Argyle Road,  
Sevenoaks,  
TN13 1HG

## APPENDIX S: Annexe 1

### Criteria for Assessment of Complaints against Members relating to the Code of Conduct

All the criteria used for the assessment of complaints against Members in respect of the Code of Conduct apply to all relevant codes not just those of Sevenoaks District Council.

#### Initial Intake test

Before assessment of a complaint begins, the complaint has to meet the following tests:

It is a complaint against one or more named Members of Sevenoaks District Council or one or more named Members of one of the Parish/Town Councils within the Sevenoaks District Council area.

The Subject Member was a Member at the time of the alleged conduct.

The Member was acting in their official capacity. (If there is ambiguity the box should still be ticked and the matter assessed).

The behaviour took place within the last 30 days.

The complainant has given their name and address.

The complaint is not an allegation that could constitute a criminal offence (Section 34 of the Localism Act 2011)

The complaint is not being dealt with by the police, ombudsman or another complaint process (in this case the complaint will not be processed until after the other process has been completed).

The complaint is not being made within 6 weeks prior to an election where the Member subject to the complaint or the complainant is a candidate (no action will be taken in relation to such a complaint within this period)

The complaint is not the same or substantially similar to a complaint that has already been assessed even if this was prior to 1st July 2012.

The complaint is a substantive allegation under the Code rather than a service, officer or a statement of policy disagreement or a disagreement within another organisation, such as a political group (in this case the complainant may be directed to refer the complaint to another organisation).

Tick box
<input type="checkbox"/>

## Agenda Item 3

If the complaint fails one or more of these tests it cannot be considered for Assessment and the complainant will be informed that no further action will be taken in respect of the complaint. The Subject Member concerned will also be told of the complaint and that it had failed the Initial Intake test. The relevant Clerk will be informed of a complaint relating to a Town or Parish Councillor when a complaint passes the Initial Intake Test. The Monitoring Officer may advise the complainant that the complaint needs to be referred elsewhere, if appropriate.

### Assessment test

The Subject Member concerned will be informed of the complaint by being sent a copy of the complaint together with all supporting documentation and given the opportunity to respond.

The allegations will then be considered by the Monitoring Officer, together with the appointed Independent Person. A complaint will be considered in relation to the following criteria: -

#### Sufficiency of Complaint

- Does the complaint state sufficient and detailed information as regards the allegation and alleged misconduct to sustain a breach of the Code of Conduct
- Does the complaint and related documents include sufficient independent evidence supporting the claim and establishing the facts on which it is based such as witness statements and documentary evidence to show a reasonable prospect of establishing a breach of the Code of Conduct
- Can it be shown that the Subject Member was acting in a public capacity
- Can it be shown that the behaviour falls within the relevant Code of Conduct

#### Evidence

- Is the evidence sufficiently reliable i.e. is it first hand evidence or hearsay evidence
- What weight can be given to the evidence
- Is the evidence relevant to the alleged breach
- Could any further evidence be revealed by an investigation

#### Suitability for Investigation

- Is it sufficiently serious
- Would an investigation serve any useful purpose
- Have the circumstances changed
- Is it serious enough to warrant a sanction

- Is the conduct seriously and unreasonably disrupting the business of the authority
- How long ago did the alleged conduct occur
- Is an investigation likely to prove on the balance of probability that a breach took place
- Is it likely that an investigation will prove only a technical or inadvertent breach
- Has the same or a substantially similar complaint already been the subject of an investigation
- Is the complaint really about dissatisfaction with a Council decision
- Is the complaint about the administrative practices of the Council rather than a Member's behaviour

### Extenuating Circumstances

- Has the issue been publicised in the local press
- Is the complaint malicious
- Is the complaint minor
- Is the complaint tit for tat
- Is the case politically motivated

### Possible Defences

- Was the breach made in all innocence i.e. without knowledge
- Are there strong mitigating circumstances
- Was there provocation

In order to facilitate the making of a decision the following definitions are given: -

- Lack of respect means derogatory comments that are aimed at a person or their personal qualities. However, Members should be able to express disagreement publically with each other and have the freedom to disagree with the views and opinions of others.
- Bullying or intimidation means offensive, intimidating, malicious or insulting behaviour, an abuse or misuse of power through means that undermine, humiliate, denigrate, or injure the recipient (Advisory, Conciliation and Arbitration Service (Acas)). Such conduct is unlikely to be considered as bullying when it is an isolated incident of a minor nature or when the behaviour by both the complainant and the Subject Member contributed equally to the breakdown in relations.

The Monitoring Officer will evaluate and weigh up the above criteria in reaching a decision. The Monitoring Officer will make one of the following decisions: -

- No further action

## Agenda Item 3

- Attempt informal resolution
- Recommend formal investigation

The complainant, the Subject Member concerned and the relevant Town/Parish Clerk (if applicable) will be informed of the outcome.

There may be certain complaints where the Monitoring Officer feels the need to make a referral to the Standards Assessment Working Party. Such referrals will take place according to the criteria set out below.

### Criteria for referral to the Standards Assessment Working Party

- It is of an extremely sensitive nature or other similarly exceptional circumstances exist which justify departure from the arrangements and the Monitoring Officer and Independent Person must set those reasons out so they can be scrutinised.
- It involves the Leadership of the Council or the Opposition
- It involves the Chairman of the Council
- Complaints are from the Chief Executive, Section 151 Officer or the Monitoring Officer
- There is a significant conflict of interest on the basis that the Monitoring Officer has previously advised the Member on the matter.

## APPENDIX S:

# Arrangements for dealing with Code of Conduct Complaints under the Localism Act 2011

- 1 **Delegations under these arrangements**
  - 1.1 The Monitoring Officer is appointed as the Proper Officer to receive complaints of failure to comply with the Code of Conduct.
  - 1.2 The Monitoring Officer, in consultation with the Independent Person, to determine whether a complaint merits formal investigation and to arrange such investigation. The Monitoring Officer will seek resolution of complaints without formal investigation wherever practicable, and is given discretion to refer decisions on investigation to the Standards Assessment Working Party in accordance with the criteria set out in Annexe 1 for them to take the decision. The Monitoring Officer will report regularly to the Standards Committee on the discharge of this function.
  - 1.3 Where an investigation finds no evidence of failure to comply with the Code of Conduct, the Monitoring Officer is instructed to close the matter, providing a copy of the report and findings of the investigation to the complainant and to the member concerned (the Subject Member), and to the Independent Person, and reporting the findings to the Standards Committee for information
  - 1.4 Where the investigation finds evidence of a failure to comply with the Code of Conduct, the Monitoring Officer in consultation with the Independent Person is authorised to seek local resolution to the satisfaction of the complainant in appropriate cases, with a summary report for information to the Standards Committee. Where such local resolution is not appropriate or not possible, the Monitoring Officer will report the investigation findings to a Standards Hearings Sub Committee for local hearing.

### **Sanctions**

- 1.5 The Council delegates to Hearings Panels such of its powers as can be delegated to take decisions in respect of a member who is found on hearing to have failed to comply with the Code of Conduct, such actions to include-

### Sanctions for Sevenoaks District Council Members:

## Agenda Item 3

- Reporting its findings to Council for information and publishing findings on the District Council's website;
- Recommending to the Member's Group Leader (or in the case of un-grouped Members, recommend to Council or to Committees) that he/she be removed from any or all Committees or Sub-Committees of the Council. It may not be possible for the Group Leader to carry out the recommendation if the Group is very small.
- Recommending to the Leader of the Council that the member be removed from the Cabinet, or removed from particular Portfolio responsibilities;
- Instruct the Monitoring Officer to arrange training for the Member and/or conciliation if appropriate;
- Recommend to the District Council that the member be removed, from all outside appointments to which he/she has been appointed or nominated by the authority.

### Sanctions for Town and Parish Council Members:

- Reporting its findings to the Town/Parish Council, for information and publish findings on the District Council's website;
- Recommending to the Town/Parish Council that he/she be removed from any or all Committees or Sub-Committees of the Council;
- Recommend that the Town/Parish Council arrange training for the member and/or conciliation if appropriate all at the Town/Parish Council's own expense;
- Recommending to the Town/Parish Council that the member be removed, from all outside appointments to which he/she has been appointed or nominated by the authority.

### The Election Period

No action will be taken in relation to any complaint within six weeks prior to an election.

## **2 Context**

- 2.1 These "Arrangements" set out how anyone may make a complaint that an elected or Co-opted Member of Sevenoaks District Council or of a town/parish council within its area has failed to comply with the authority's Code of Conduct, and sets out how Sevenoaks District Council will deal with allegations of a failure to comply with the authority's Code of Conduct.
- 2.2 Under Section 28(6) and (7) of the Localism Act 2011, the Council must have in place "arrangements" under which allegations that a

Member or Co-opted Member of the authority or of a town/parish council within the authority's area, or of a Committee or Sub-Committee of the authority, has failed to comply with that authority's Code of Conduct can be investigated and decisions made on such allegations.

- 2.3 Such arrangements must provide for the authority to appoint at least one Independent Person, whose views must be sought by the authority before it takes a decision on an allegation which it has decided shall be investigated, and whose views can be sought by the authority at any other stage, or by a Member or Co-opted Member of a town/parish council against whom an allegation as been made.

### **3 The Code of Conduct**

- 3.1 The Council has adopted a Code of Conduct for Members and Co-opted Members, which is set out within the Council's Constitution and available for inspection on the authority's website and on request from Reception at the District Council Offices.
- 3.2 Each town/parish council is also required to adopt a Code of Conduct. If anyone wishes to inspect a Town/Parish Council's Code of Conduct, they should inspect any website operated by the town/parish council or request the town/parish clerk to allow inspection of the town/parish council's Code of Conduct.

### **4 Making a complaint**

- 4.1 If anyone wishes to make a complaint, please write or email to -

The Monitoring Officer  
Council Offices, Argyle Road,  
Sevenoaks  
TN13 1HG

Or -

[members.conduct@sevenoaks.gov.uk](mailto:members.conduct@sevenoaks.gov.uk)

- 4.2 The Monitoring Officer is a senior officer of the authority who has statutory responsibility for maintaining the Register of Members' Interests and who is responsible for administering the system in respect of complaints of Member or Co-opted Member misconduct.
- 4.3 In order to ensure that we have all the information which we need to be able to process a complaint, a complainant will need to complete and send us the Complaint Form, set out at Annexe 4 to these arrangements, which can be downloaded from the Sevenoaks District Council's website and is available on request from Reception at the District Council Offices.

## Agenda Item 3

- 4.4 The complainant will need to provide us with details of their name and a contact address or email address, so that we can acknowledge receipt of the complaint. The authority does not normally investigate anonymous complaints, unless there is a clear public interest in doing so.
  - 4.5 The Monitoring Officer will acknowledge receipt of the complaint promptly after receiving it. The Monitoring Officer will send the Subject Member a copy of the complaint and all supporting evidence in order that the Subject Member can reply to the complaint. The Monitoring Officer will notify the complainant and Subject Member of any decision taken upon it.
  - 4.6 The Monitoring Officer will validate the complaint by subjecting it to the Initial Intake test and Assessment test set out in Annexe 1 to these arrangements. If the complaint fails, the Initial Intake test it will not be considered further and the complainant and the Subject Member will be informed of this. The relevant Clerk will be informed of a complaint relating to a Town or Parish Councillor when a complaint passes the Initial Intake Test. If the complaint fails, the subsequent Assessment test it will not be considered further and the complainant and the Subject Member will be informed of this.
  - 4.7 If the complaint appears to the Monitoring Officer not to be a substantive allegation of misconduct under the Code of Conduct, the Monitoring Officer will so inform the complainant but may ensure where appropriate that the matter is dealt with under a more relevant procedure, eg: if it is a complaint about a service or an officer or a statement of policy disagreement.
  - 4.8 If the complaint appears to the Monitoring Officer to be an allegation that could constitute a criminal offence, the Monitoring Officer will advise the complainant to refer the complaint to the police in the first instance. (Section 34 of the Localism Act 2011).
  - 4.9 Where the complaint does appear to be an allegation of misconduct under the code, the Monitoring Officer (as well as acknowledging the complaint) will notify the Subject Member of receipt of the complaint and give the Subject Member a right to respond to the complaint. The Subject Member will normally be given up to 30 working days to comment on the complaint and provide any evidence of their own.
  - 4.10 As part of this process the Monitoring Officer may try to reach an informal resolution of your complaint, with the complainant and the Subject Member concerned.
- 5 Will the complaint be investigated?**

- 5.1 The Monitoring Officer will review every complaint passing the Initial Intake test and the Assessment test and, after consultation with an Independent Person, take a decision as to whether it merits formal investigation. This review will be carried out in conjunction with the Assessment decision factors set out in Annexe 1 of these arrangements and take into account the statements and evidence of both the complainant and the Subject Member in any response given. This decision will normally be taken within 40 working days of receipt of full information in relation to the complaint. Where the Monitoring Officer has taken a decision, they will inform the complainant and the Subject Member of the decision and the reasons for that decision.
  - 5.2 The Monitoring Officer may refer certain cases to the Standards Assessment Working Party in accordance with the Criteria entitled “Criteria for referral to the Standards Assessment Working Party” set out within Annexe 1 for advice and guidance and to make recommendation as to the decision to be taken.
  - 5.3 Where the Monitoring Officer requires additional information in order to come to a decision, the Standards Assessment Working Party may require the Monitoring Officer to go back to the complainant for such information, and will instruct the Monitoring Officer to request information from the Subject Member.
  - 5.4 In appropriate cases, the Monitoring Officer may seek to resolve the complaint informally, without the need for a formal investigation. Such informal resolution may involve the Subject Member accepting that his/her conduct was unacceptable and offering an apology, or other remedial action by the authority. Where the Subject Member makes a reasonable offer of local resolution, the Monitoring Officer will take account of this in deciding whether the complaint merits formal investigation.
- 6 How is the investigation conducted?**
- 6.1 The Council has adopted a procedure for the investigation of misconduct complaints, which is attached as Annexe 2 to these arrangements.
  - 6.2 The process is designed to be proportionate to the nature and seriousness of the case. This may involve little more than an exchange of letters or written representations in some cases.
  - 6.3 If the Monitoring Officer decides that a complaint merits formal investigation, an Investigating Officer may be appointed by the Monitoring Officer, who may be another senior officer of the authority, an officer of another authority or an external investigator. The Investigating Officer will decide whether they need to meet or speak to the complainant to understand the nature of the complaint

## Agenda Item 3

and enable the complainant to explain their understanding of events and suggest what documents the Investigating Officer needs to see, and who the Investigating Officer needs to interview.

- 6.4 The Investigating Officer would normally write to the Subject Member and provide them with a copy of the complaint, and ask the Subject Member to provide further explanation of events, and to identify what further documents are needed in addition to those contained in any initial “right of reply” response and who they need to interview.
- 6.5 At the end of the investigation, the Investigating Officer will produce a draft report and will send copies of that draft report, in confidence, to the complainant and to the Subject Member concerned, to give both an opportunity to identify any matter in that draft report which are disagreed with or which it is considered requires more consideration.
- 6.6 Having received and taken account of any comments which are made on the draft report, the Investigating Officer will send the final report to the Monitoring Officer.

### **7 What happens if the Investigating Officer concludes that there is no evidence of a failure to comply with the Code of Conduct?**

- 7.1 The Monitoring Officer in consultation with the Independent Person will review the Investigating Officer’s report and, if they are satisfied that the Investigating Officer’s report is sufficient, the Monitoring Officer will write to the complainant and to the Subject Member concerned and to the Town/Parish Council, where the complaint relates to a Town/Parish Councillor, notifying that the Monitoring Officer is satisfied that no further action is required, and give the complainant and the Subject Member a copy of the Investigating Officer’s final report. If the Monitoring Officer is not satisfied that the investigation has been conducted properly, he/she may ask the Investigating Officer to reconsider their report.

### **8 What happens if the Investigating Officer concludes that there is evidence of a failure to comply with the Code of Conduct?**

- 8.1 The Monitoring Officer will review the Investigating Officer’s report and will then either send the matter for local hearing before the Hearings Panel or, after consulting the Independent Person, seek local resolution.

#### Local Resolution

- 8.2 The Monitoring Officer may consider that the matter can reasonably be resolved without the need for a hearing. In such a case, the Monitoring Officer will consult with the Independent Person and with

the complainant and seek to agree what is considered to be a fair resolution which also helps to ensure higher standards of conduct for the future. Such resolution may include the Subject Member accepting that their conduct was unacceptable and offering an apology, and/or other remedial action by the authority. If the Subject Member complies with the suggested resolution, the Monitoring Officer will report the matter to the Standards Committee and the Town/Parish Council for information, but will take no further action.

Local Hearing

- 8.3 If the Monitoring Officer considers that local resolution is not appropriate, then the Monitoring Officer will report the Investigating Officer's report to the Standards Hearings Sub Committee which will conduct a local hearing before deciding whether the Subject Member has failed to comply with the Code of Conduct and, if so, whether to take any action in respect of the Subject Member.
- 8.4 The Council has agreed a procedure for local hearings, which is attached as Annexe 3 to these arrangements.
- 8.5 Essentially, the Monitoring Officer will conduct a "pre-hearing process", requiring the Subject Member to give their response to the Investigating Officer's report, in order to identify what is likely to be agreed and what is likely to be in contention at the hearing, and the Chair of the Standards Hearings Sub Committee may issue directions as to the manner in which the hearing will be conducted. At the hearing, the Investigating Officer will present their report, call such witnesses as they consider necessary and make representations to substantiate their conclusion that the Subject Member has failed to comply with the Code of Conduct. For this purpose, the Investigating Officer may ask the complainant to attend and give evidence to the Hearings Panel. The Subject Member will then have an opportunity to give his/her evidence, to call witnesses and to make representations to the Standards Hearings Sub Committee as to why they consider that they did not fail to comply with the Code of Conduct.
- 8.6 If the Standards Hearings Sub Committee, with the benefit of any advice from the Independent Person, concludes that the Subject Member did not fail to comply with the Code of Conduct the Standards Hearing Sub Committee can dismiss the complaint. If the Standards Hearings Sub Committee concludes that the Subject Member did fail to comply with the Code of Conduct, the Chair will inform the Subject Member of this finding and the Standards Hearings Sub Committee will then consider what action, if any, the Standards Hearings Sub Committee should take as a result of the Subject Member's failure to comply with the Code of Conduct. In doing this, the Standards Hearings Sub Committee will give the Subject Member an opportunity to make representations to the Standards Hearings Sub Committee

## Agenda Item 3

and will consult the Independent Person, but will then decide what action, if any, to take in respect of the matter.

### **9 What action can the Standards Hearings Sub Committee take where a Subject Member has failed to comply with the Code of Conduct?**

9.1 The Council has delegated to the Standards Hearings Sub Committee such of its powers to take action in respect of individual members as may be necessary to promote and maintain high standards of conduct. Accordingly, the Standards Hearings Sub Committee may impose the sanctions as set out in paragraph 1.5 above.

9.2 The Standards Hearings Sub Committee has no power to suspend or disqualify the Subject Member or to withdraw allowances or expenses.

9.3 Any decision of the District Council on sanctions in relation to a Town/Parish Council can only in effect be a recommendation to the Parish Council, who must then itself decide whether to accept the recommendation. In the absence of express powers, a district could not, for example, remove a parish councillor from a committee. The district could only make a finding of breach/no breach and then recommend a course of action to the parish.

### **10 What happens at the end of the hearing?**

10.1 At the end of the hearing, the Chair will state the decision of the Standards Hearings Sub Committee as to whether the Subject Member failed to comply with the Code of Conduct and as to any actions which the Standards Hearings Sub Committee resolves to take. Prior to reaching and announcing its decision in public, the Standards Hearings Sub Committee may retire to a separate room to deliberate in private. It cannot retire with either the Monitoring Officer or the Independent Person. The Monitoring Officer may be called by the Standards Hearings Sub Committee if they require technical or legal guidance but the nature of this must be disclosed in public.

10.2 As soon as reasonably practicable thereafter, the Monitoring Officer shall prepare a formal decision notice in consultation with the Chair of the Standards Hearings Sub Committee, and send a copy to the complainant, to the Subject Member and to the Town/Parish Council, and make that decision notice available for public inspection.

### **11 Who are the Standards Hearings Sub Committee?**

11.1 The Standards Hearings Sub Committee derives from the Council's Standards Committee and will consist of three Members drawn from

the membership of the Standards Committee in accordance with the rules on political balance, if required.

- 11.2 The Independent Person is invited to attend all meetings of the Standards Hearings Sub Committee and their views are sought and taken into consideration before the Standards Hearings Sub Committee takes any decision on whether the Subject Member's conduct constitutes a failure to comply with the Code of conduct and as to any action to be taken following a finding of failure to comply with the Code of Conduct. The Independent Person otherwise takes no part in the discussions or deliberations of the Standards Hearings Sub Committee.

## 12 Who is the Independent Person?

The Independent Person is a person who has applied for the post following advertisement of a vacancy for the post, and is appointed by a positive vote from a majority of all the Members of Council.

A person cannot be "independent" if they -

- 12.1 Are, or have been within the past 5 years, a member, co-opted member or officer of the authority;
- 12.2 Are or have been within the past 5 years, a member, co-opted member or officer of a town/parish council within the authority's area, or
- 12.3 Are a relative, or close friend, of a person within paragraph 12.1 or 12.2 above. For this purpose, "relative" means -
- 12.3.1 Spouse or civil partner;
- 12.3.2 Living with the other person as husband and wife or as if they were civil partners;
- 12.3.3 Grandparent of the other person;
- 12.3.4 A lineal descendent of a grandparent of the other person;
- 12.3.5 A parent, sibling or child of a person within paragraphs 12.3.1 or 12.3.2;
- 12.3.6 A spouse or civil partner of a person within paragraphs 12.3.3, 12.3.4 or 12.3.5; or
- 12.3.7 Living with a person within paragraphs 12.3.3, 12.3.4 or 12.3.5 as husband and wife or as if they were civil partners.

## Agenda Item 3

### 13 Revision of these arrangements

- 13.1 The Council may by resolution agree to amend these arrangements, and has delegated to the Chair of the Standards Hearings Sub Committee the right to depart from these arrangements where they consider that it is expedient to do so in order to secure the effective and fair consideration of any matter.

### 14 Appeals

- 14.1 There is no right of appeal for you as complainant or for the Subject Member against a decision of the Monitoring Officer or of the Standards Hearings Sub Committee.
- 14.2 If the complainant feels that the authority has failed procedurally to deal with the complaint properly, a complaint may be made to the Local Government Ombudsman.

Annexe One Initial test and Assessment Criteria

Annexe Two Procedure for Investigations

Annexe Three Procedure for Standards Hearings Sub Committee

Annexe Four Complaint Form