

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:

- 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

- 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.

- 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

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

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.

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