

**Classification:** Public

**Key Decision:** No

## **Gravesham Borough Council**

**Report to:** Cabinet  
Full Council

**Date:** 4 February 2019  
26 February 2019 / 16 April 2019

**Reporting officer:** Perry Holmes - Monitoring Officer

**Subject:** Proposed amendments to the Constitution  
– Standards Committee

### **Purpose and summary of report:**

To obtain approval of Full Council for the proposed amendments to the Constitution relating to the Standards Committee, to bring the Terms of Reference of the Committee and the process for dealing with complaints regarding Councillors up to date in accordance with legislation.

### **Recommendations:**

1. It is recommended that the proposed amendments to the Summary and Explanation, Annex 1.2, Annex 2.1 and Annex 3.8 as laid out in the report be approved and determined by full Council on 26 February 2019.
2. It is recommended that the proposed amendments to Articles 3, 7, 9 and 15 as laid out in the report be received by council without debate on 26 February 2019 and referred to the next ordinary council meeting on 16 April 2019 for a decision.
3. It is recommended that the proposed policies for dealing with complaints against Councillors be adopted by full Council.

## **1. Introduction**

- 1.1 A full review of the constitution is being undertaken. This report seeks agreement to update all sections of the constitution relating to the Standards Committee to reflect changes in legislation including the Terms of Reference and the membership of the Committee. This report also recommends that policies on the process of dealing with complaints against Councillors be adopted by full council.

- 1.2 The proposed changes mirror Medway Council's process of dealing with complaints against members to bring efficiencies as Gravesham Borough Council and Medway Council now share a Monitoring Officer.
- 1.3 The remainder of the suggested updates to the Constitution will be presented to Cabinet and full council once the full review has concluded. The Standards Committee sections have been brought forward to reflect current legislation.
- 1.4 The relevant pages of the Constitution have been amended with the proposed new wording in track changes and highlighted in yellow for ease of reference and copies are attached hereto. As part of the full review of the constitution other suggested updates have been made to a master copy of the constitution and these will appear in the tracked changed version. Members need only consider the draft changes that have been highlighted yellow for the purposes of this report. The remainder of the draft changes will be brought to full council at a later date with a summary of the changes. A second version is also attached with the track changes accepted which may be an easier version to read. A summary of the suggested changes is attached as Appendix 2.

## **2. Proposal**

- 2.1 The proposed changes to the Summary and Explanation section at the beginning of the Constitution and Article 3 delete references to the Standards Board which is no longer in existence and clarifies that complaints should be made to the Standards Committee and addressed in the first instance to the Monitoring Officer.
- 2.2 Articles 7 and 9 have been amended to reflect legislative changes whereby:
  - 2.2.1 investigations into councillor's conduct are now undertaken by Independent Investigators rather than the Monitoring Officer or the Standards Committee;
  - 2.2.2 the role of the Independent Person has changed to an advisory role rather than being appointed to the Committee;
  - 2.2.3 the Standards Committee instead of the Monitoring Officer will assess complaints and decide whether or not an investigation is required.
  - 2.2.4 There is no need for a panel of members to be drawn from the committee and instead the full committee will assess the complaints.
  - 2.2.5 There is no longer a need to appoint Parish councillors to the committee;

- 2.2.6 The proposed amendments to reflect legislation also mirror Medway Council's Constitution and policies for dealing with councillor conduct complaints to bring efficiencies.
- 2.3 Annex 2.1 proposes that the quorum for the Standards Committee is 3.
- 2.4 Annex 3.8 proposes that the process for recruiting Independent Persons has been amended to place the responsibility for this on the Monitoring Officer in consultation with the Service Manager (Communities) to mirror Medway Council's process thereby enabling the MO to hold one recruitment round for both local authorities.
- 2.5 The Constitution requires Full Council to approve changes to Annex 1 of the Constitution (Article 4.4).
- 2.6 The Constitution provides that changes to the Articles of the Constitution; the Procedural Rules set out in Annex 2 and the Codes of Practice and Protocols set out in Annex 3 can only be made by the full Council, which may not delegate this function. Such proposals for changes may only be considered by the Council on receipt of a written report by the Standards Committee; and/or the Monitoring Officer. Proposals for changes to the Articles of the Constitution will first be received by the Council without debate and referred to the next ordinary meeting of the Council (Article 15.3 (1) of the Constitution).
- 2.7 Further the Constitution provides that proposals for changes to any of the Procedural Rules set out in Annexes 2; to any of the Codes of Practice and Protocols set out in Annexes 3 may be considered and determined forthwith by the Council (Article 15.3 (2) of the Constitution).
- 2.8 Where a proposal to change the Constitution does not involve a change in the form of executive arrangements there would not normally be a requirement to consult with local electors and other interested persons in the Borough, unless the changes proposed will have substantial implications for all or a significant proportion of them (Article 15.3 (5)). The proposed changes do not involve the form of executive arrangements nor do they have substantial implications for a significant proportion of them.
- 2.9 On the basis of the above it is recommended that the proposed amendments to Summary and Explanation, Annex 1, 2 and 3 may be determined by full Council at the first council meeting it is presented to, which will be on 26 February 2019.
- 2.10 It is recommended that the proposed amendments to Articles 3, 7, 9 and 15 be received by Council without debate on 26 February 2019 and referred to the next ordinary council meeting on 16 April 2019 for a decision.
- 2.11 The following documents are attached hereto:

Appendix 1 – Implications

Appendix 2 – Summary of Changes

Appendix 3 – Amended pages of the constitution with track changes

Appendix 4 – Amended pages of the constitution with track changes accepted

Appendix 5 – GBC's procedure for dealing with Member Conduct Complaints under the Localism Act 2011

Appendix 6 – Procedural Guidance for investigations about Member conduct allegations under the Localism Act 2011

Appendix 7 – Localism Act 2011 – s34 Criminal Offence Investigations in Kent & Medway

### **3. BACKGROUND PAPERS**

3.1 There are no background papers to this report.

Anyone wishing to inspect background papers should, in the first place, be directed to Committee & Electoral Services who will make the necessary arrangements.

**IMPLICATIONS****APPENDIX 1**

<b>Legal</b>	A Local Authority is under a duty to prepare and keep up to date its constitution under s9P of the Local Government Act 2000 as amended.
<b>Finance and Value for Money</b>	There are no financial implications.
<b>Risk Assessment</b>	It is of critical importance that the council has sufficient government arrangements in place which is provided by a constitution that is kept upto date.
<b>Equality Impact Assessment</b>	<b>Screening for Equality Impacts</b>
	<b>Question</b>
	a. Does the decision being made or recommended through this paper have potential to cause adverse impact or discriminate against different groups in the community? If yes, please explain answer. No
	b. Does the decision being made or recommended through this paper make a positive contribution to promoting equality? If yes, please explain answer. No
<b>Corporate Plan</b>	Corporate Plan Objective 4 - Sound and Self Sufficient Council
<b>Crime and Disorder</b>	N/A

<b>Digital and website implications</b>	N/A
<b>Safeguarding children and vulnerable adults</b>	N/A

Appendix 2 - Table of changes – Standards Committee

Reference	Change	Reason for Change
Summary and Explanation	Citizens' Rights, 4.3 (j) – complaints are to be made to the Standards Committee.	The Standards Board no longer exists so instead complaints are to be made to the Standards Committee.
The Articles – Article 3	3.1 (4) (c ) is brought upto date to clarify that complaints are made to the Standards Committee addressed in the first instance to the Monitoring Officer.	This brings the process in line with legislation and mirrors Medway Council's process for efficiency as both local authorities share the same Monitoring Officer.
Article 7	7.9 deletes any reference to an investigation relating to councillor's conduct being undertaken by the Monitoring Officer or Standards Committee.	This reflects legislative changes as investigations into councillor's conduct are now undertaken by independent investigators rather than the Monitoring Officer or the Standards Committee.
Article 9	<p>Paragraph 9.2 (b) has been deleted</p> <p>Paragraph 9.4 has been deleted and replaced.</p> <p>Paragraph 9.5 has been deleted and replaced</p>	<p>9.2 (b) – Legislation has changed the role of the Independent Person who is no longer appointed to a Committee but instead provides an advisory role to the Standards Committee regarding complaints against Councillors (Localism Act 2011).</p> <p>9.4 - Instead of the Monitoring Officer assessing complaints it will be for the Standards Committee to assess complaints and decide whether an investigation is required or not.</p> <p>9.5 – It is no longer necessary for a panel of members to be drawn from the committee instead the full committee will deal with complaints. It is no longer necessary to appoint Parish Councillors to deal with complaints.</p> <p>The wording now mirrors that of Medway Council to bring efficiencies for the Monitoring Officer who is MO for both local authorities and therefore only working to one process.</p>

Appendix 2 - Table of changes – Standards Committee

Reference	Change	Reason for Change
Article 15	Paragraph 15.1 (2) – reference to the Standards for England has been deleted.	Standards for England no longer exists.
Annex 1.2 – Standards Committee	<p>Paragraphs 1 (a) and (b) have been replaced by wording from Medway Council’s constitution to mirror the process for dealing with complaints regarding Councillors.</p> <p>Paragraph 4 has been deleted and replaced to reflect changes in legislation.</p> <p>Paragraph 7 (c ) has been updated as they is no longer a legislative need to appoint Independent Persons and Parish Councillors to the Standards Committee although the IP’s do retain a role in relation to complaints.</p> <p>Assessment Sub-Committee and Review Sub-Committee sections have been deleted and replaced.</p>	<p>The Standards Board no longer exists so this section has been updated in accordance with current legislation and mirrors Medway’s process for efficiencies as both local authorities share the same Monitoring Officer.</p> <p>There is no longer a need to have an assessment Sub-Committee and Review Sub-Committee. The new wording mirrors Medway Council’s constitution and processes for dealing with complaints against councillors, and the new process requires the whole of the Standards Committee to consider whether a complaint should be investigated and to consider the report of any investigation and the comments of the Independent Person.</p>
Annex 2.1	Paragraph 11.1 has been amended to clarify that the quorum for the Standards Committee is 3.	This reflects the quorum set in Article 9 and is added here for the avoidance of doubt.
Annex 3.8	<p>This section has been updated throughout to delete the reference to appointing Independent Persons and Parish Councillors to the Standards Committee.</p> <p>The process for recruiting Independent Persons has been amended to place the responsibility for this on the Monitoring Officer in consultation with the Service Manager (Communities).</p>	<p>Due to changes in legislation it is no longer necessary for Independent Persons and Parish Councillors to be appointed to the Standards Committee.</p> <p>The IP’s retain a role but as they are no longer appointed to the Committee it is proposed that the recruitment of IP’s is undertaken by the Monitoring Officer in consultation with the Service Manager (Communities) to mirror Medway Council’s process. This will enable the MO to hold one recruitment round for both local authorities.</p>



## 4. Citizens' Rights

- 4.1 Citizens have a number of rights in their dealings with the Council. These are set out in more detail in Article 3 of this Constitution. Some of these are legal rights, whilst others depend on the Council's own processes. The Citizens' Advice Bureau (CAB) can advise on individuals' legal rights.
- 4.2 Where members of the public have a contract with the Council under which the Council agrees to do certain things, for example as a Council tenant, they have additional rights. These are not covered in this Constitution.
- 4.3 Citizens have the right to:-
- (a) vote at local elections if they are registered;
  - (b) contact their local Councillor about any matters of concern to them;
  - (c) have access to a copy of this Constitution;
  - ~~(d) attend meetings of the full Council, and its Committees, Boards and Panels except where confidential or exempt matters are being discussed;~~
  - ~~(e) attend meetings of the Cabinet when Key Decisions are being decided or discussed;~~
  - ~~(d) attend meetings of the full Council, Cabinet, Committees, Boards and Panels except where confidential or exempt matters are being discussed;~~
  - (fe) petition to request a referendum on a Mayoral form of executive;
  - (gf) attend meetings of any Scrutiny Committee and, by invitation of a committee, contribute to investigations or reviews undertaken by them;
  - ~~(h) from the Cabinet's Forward Plan, find out what major decisions are to be discussed or decided by the Cabinet and when;~~
  - (ig) see agendas reports and background papers and records of decisions made by the Council, Cabinet, Committees, Boards and Panels (but excluding access to confidential/exempt information);
  - (jh) complain to the Council about Council services – the Council encourages its customers through its Corporate Complaints Procedure to voice their concerns as an opportunity to put things right for the customer and to improve services;
  - (ki) complain to the Local Government Ombudsman if they think the Council has not followed its procedures properly. However, they should only do this after using the Council's Corporate Complaints Procedure;
  - (lj) complain to the Standards Board for England Standards Committee Monitoring Officer if they have evidence which they think shows that a Councillor has not followed the Member Code of Conduct;

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| (~~mk~~) inspect the Council's accounts and to make their views known to the external auditor.

4.4 The Council welcomes participation by its citizens in its work. For further information on your rights as a citizen, please contact the Council's Committee and Electoral Services Department on 01474 33 72 47.

## **Article 3 – Citizens and the Council**

### **3.1 Citizens' Rights**

Citizens have the following rights. Their rights to information and to participate are explained in more detail in the Access to Information Rules as set out in Annex 2.2 to this Constitution.

#### **(1) Voting and Petitions**

Citizens who are on the electoral roll for the Borough have the right to vote and to sign a petition, requesting a referendum for an elected Mayor form of constitution. Residents and those who work or study within the Borough also have the right to sign petitions.

#### **(2) Information**

Citizens have the right to:-

- (a) attend meetings of the Council and its Committees, Boards and sub-committees, except where confidential or exempt information is likely to be disclosed and the meeting is therefore held in private;
- (b) attend meetings of the Cabinet when "Key Decisions" are being considered, except where confidential or exempt information is likely to be disclosed and the meeting is therefore held in private;
- (c) find out from the Council's website what "Key Decision(s)" will be taken by the Cabinet, or by any bodies or individuals to whom the Cabinet may have delegated the exercise of any of its functions, and when it is expected those decisions will be taken;
- (d) see reports and background papers (excluding confidential/exempt information) and any records of decisions made by the Council, Cabinet, Committees, Boards and sub-Committees; and
- (e) inspect the Council's accounts and make their views known to the external auditor.

#### **(3) Participation**

Citizens have the right to participate in the Council's question time and (on invitation by the committee or by the committee Chair) to contribute to investigations by a Scrutiny Committee.

Public speaking is allowed at meetings of the Regulatory Board (Planning).

#### **(4) Complaints**

Citizens have the right to complain to:-

- (a) the Council itself under its Complaints Procedure;

- (b) the Local Government Ombudsman, after using the Council's Complaints Procedure;
- (c) the ~~Standards Committee Council's Monitoring Officer~~ about an alleged breach of the Member Code of Conduct set out in Annex 3.1 to this Constitution. These complaints should be addressed to the Monitoring Officer, Gravesham Borough Council, Civic Centre, Windmill Street, Gravesend, Kent, DA12 1AU;

### 3.2 Citizens' Conduct

Citizens must not be violent, abusing or threatening to Councillors or Officers and must not wilfully harm things owned by the Council, Councillors or Officers.

## Article 7 - Leader and Cabinet Executive

### 7.1 Role and Functions

The Council has adopted a form of executive arrangements known as a new style "Leader and Cabinet Executive". The various parts of this Constitution that together comprise the Council's executive arrangements are set out in Annex 1.18 to this Constitution.

The Executive will exercise all of the Council's functions which are not the responsibility, whether by law or under this Constitution, of any other part of the Council.

### 7.2 Form and Composition

(1) The Executive will comprise:-

- 1.1 ~~The Leader who will be a Councillor elected by the Council at the Annual Meeting of the full Council following on from the ordinary election of all councillors; a Leader elected by the Council at its Annual Meeting in May 2011 and at every post election Annual Meeting (under whole Council elections) thereafter;~~
- 1.2 no more than ten Cabinet Members, including the Leader and the Deputy Leader.

### 7.3 Leader of the Executive

- (1) The term of office of the Leader starts on the day of his/her election as Leader and ends on the day of the next post election Annual Meeting (under whole Council elections) unless, before that day, he/she:-
  - 1.1 is removed from office or resigns;
  - 1.2 ceases to be a Councillor; or
  - 1.3 is disqualified from being a Councillor.
- (2) The Leader will be a Councillor of the Borough of Gravesham and will be elected by the Council to serve for a term of four years or until the Annual Meeting following the next ordinary Council elections.
- (3) During his/her term of office the Leader will continue to hold office as a Councillor and accordingly, any enactment which provides for earlier retirement as a Councillor will not apply.
- (4) The Council will have the power to remove the Leader from office before the end of his/her four year term by way of resolution. At any meeting of the Full Council a Councillor may propose that "the Council has no confidence in the Leader". If carried by a simple majority of those Councillors present and voting, the Leader will be removed from office.

- (5) If the Council passes a resolution to remove the Leader, a new Leader will be elected:-
- 5.1 at the same meeting at which the Leader is removed from office; or
  - 5.2 at a subsequent meeting.

#### **7.4 Appointment of the Cabinet and scheme of delegation**

- (1) The Leader will decide the size of his/her Cabinet (subject to a maximum of ten, including the Leader and Deputy Leader) and will appoint Cabinet Members from among the serving Councillors. The Leader may replace or remove Cabinet Members at any time.
- (2) All executive functions of the Council will be vested in the Leader. The Leader may exercise those functions himself/herself, or may delegate specified executive functions to be exercised by the Cabinet collectively, a Cabinet Committee, an individual Cabinet Member or an Officer. The Leader may revoke such delegations at any time.
- (3) Delegation of executive function(s) to be exercised by a Cabinet Member or by a Ward Councillor in accordance with Section 236 of the Local Government and Public Involvement in Health Act 2007; will be at the discretion of the Leader.
- (4) The Leader will report to Council on all appointments and changes to the Cabinet (Executive) and delegation of executive functions of the Council.

Neither the Mayor nor Deputy Mayor may be elected as Leader of the Executive or be appointed to the Cabinet.

The Leader of the Executive may not be appointed to any Scrutiny Committee or to the Standards Committee. Other Members of the Cabinet may not be Chair of the Standards Committee and may not be appointed to any Scrutiny Committee. Not more than two Members of the Cabinet (or the nearest whole number equivalent to 20 per cent of the total membership of the Regulatory Board (Planning), whichever is the lesser figure) may be appointed to the Regulatory Board (Planning) or such other committee or sub-committee as may be appointed to determine matters relating to the grant of licences and statutory consents or enforcement action against persons. No Member of the Cabinet so appointed shall be the Chair or Vice-Chair of the Regulatory Board (Planning) nor of any other committee or sub-committee discharging similar functions.

The nearest whole number equivalent to 50 per cent of the total membership of the Appointments Board will be selected by the Leader of the Executive for appointment to the Appointments Board (or such other committee as may be appointed to determine matters relating to the appointment of officers).

Not less than three Members of the Appointments Board who have been selected by the Leader of the Executive (or the nearest whole number equivalent to 50 per cent

of the total membership of an Appointments Panel constituted from the membership of the Appointments Board, whichever is the lesser figure) will be appointed to an Appointments Panel or any other body authorised to make an appointment to the Council's staff.

There shall not be any co-optees, deputies or substitutes for Members of the Cabinet, excepting that Members of the Cabinet (including the Leader) may be substitutes for each other on any sub-Committees, Panels or Working Groups established by, and reporting to, the Cabinet.

#### **7.5 Deputy Leader**

- (1) The Leader will appoint a Deputy Leader from among the Cabinet Members. The Leader may replace the Deputy Leader at any time, but otherwise the Deputy Leader will remain in post for the duration of the Leader's term of office.
- (2) The Deputy Leader will have authority to exercise the Leader's powers only in the event that the Leader is unable to act at any time or the office of Leader is vacant.
- (3) If the Deputy Leader is unable to act or the office is vacant, the Cabinet (Executive) must act in the Leader's place or arrange for a Member of the Cabinet (Executive) to do so.

#### **7.6 Proceedings of the Cabinet**

Proceedings of the Leader and Cabinet Executive shall take place in accordance with the Executive Procedure Rules set out in Annex 2.4 to this Constitution.

#### **7.7 Delegation of Powers**

The ~~Service Manager Assistant Director~~ (Communities) shall maintain a list setting out clearly which Members of the Cabinet, sub-committees of the Cabinet, officers of the Council, area committees or joint arrangements with other local authorities carry current responsibilities for the discharge of functions delegated by the Cabinet, together with the current allocation of portfolios amongst Cabinet Members. This list, as amended from time to time, shall be incorporated within Annex 1 to this Constitution and shall be made publicly available.

#### **7.8 Cabinet Committees**

The Leader may appoint Cabinet Committees to advise it about carrying out its functions. Such Committees, and appointments of individuals to them, may exist for a fixed or unspecified period, but in any event will cease upon a change in the political control of the Council or at the Annual Meeting of the Council immediately following a general election of the entire Council.

When establishing a Cabinet Committee, the Leader shall also state the Committee's Terms of Reference and composition, which shall be made publicly available. Appointments and terminations of appointments of individuals to existing committees shall similarly be made public.

Such Committees may be made up of any mixture of Councillors. Council officers may attend meetings of such Committees to provide information.

Cabinet Committees need not comply with the legislation on political proportionality, but they should reflect a broad cross-section of both the Council and the wider community. Committees should be constituted having regard to the particular knowledge and skills of those appointed.

Any written reports made by a Cabinet Committee to the Cabinet shall be made publicly available, except where they contain confidential and/or exempt information.

## **7.9 Ethics and Probity**

Members of the Cabinet will be treated no differently from other Councillors in that they will be subject to the Member Code of Conduct set out in Annex 3.1 to this Constitution, and to investigation ~~by the Council's Monitoring Officer or Standards Committee~~ should any allegations of breaches of the Code be received.

Members of the Cabinet will be required to declare and register their interests and, if appropriate, to seek local dispensations from the Standards Committee.

## **7.10 Officer Support**

Officers are employed by the Council to work for and serve the Council as a whole. The Cabinet will respect the political neutrality of Officers.



## Article 9 – The Standards Committee

### Explanatory Comment

Standards Committees have an important role in strengthening and maintaining the high standards of conduct required of Members and officers.

#### 9.1 Standards Committee

The Council has established a Standards Committee.

#### 9.2 Composition

- (a) Membership. The Standards Committee is composed of nine Members.
- (b) ~~Political Balance. The Standards Committee will be politically balanced. Independent Person. The Independent Person is appointed to advise and assist the Monitoring Officer and Members in relation to allegations that the Code of Conduct has been broken. Independent Persons are not members of the Standards Committee. The Monitoring Officer may appoint Independent Persons as vacancies arise and may appoint deputies.~~
- (c) ~~Quorum. The Quorum of the Councillor Conduct Committee shall be three Councillors.~~
- (d) Chairing the Committee. A Member of the Executive may not chair the Committee.

#### 9.3 Role and function

For the Standards Committee Terms of Reference see Annex 1.2 of the Constitution.

~~9.4 The Committee will receive allegations that a Councillor or voting or non-voting co-opted member of the Council of the 6 Parish Councils has breached the relevant Members Code of Conduct and decide whether or not an investigation is to be varied out in relation to those complaints. The Monitoring Officer advised by the Independent Person will assess complaints regarding the conduct of Members within the Borough and decide whether or not an investigation is to be carried out in relation to these complaints.~~

~~9.5 If the Committee decides to refer the allegation to the Monitoring Officer for investigation it shall receive the report of any investigator and the opinion of the Independent Person. The Committee may on receipt of the report, the opinion and any written representations decide whether a breach of the Councillor Code of Conduct has occurred and if so what action to recommend. Hearings following investigations will be dealt with by a Panel of Members drawn from the Committee. On Parish complaints a Parish Councillor will be a member of the Panel in a non-voting capacity.~~

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## Article 15 – Review and Revision of the Constitution

### 15.1 Duty to Monitor and Review the Constitution

The Council's Monitoring Officer will monitor the operation of the Constitution to ensure that its aims and principles are given full effect.

The Monitoring Officer will also carry out a general or partial review (as appropriate) of the Constitution in the following circumstances:-

- (1) at the direction of a court or of the Secretary of State;
- (2) on the recommendation of ~~Standards for England~~, the Local Government Ombudsman, the Council's external auditors or one of the Council's Statutory Officers appointed in accordance with Article 12.05 of this Constitution;
- (3) by a decision of the Council;
- (4) in the event that no general review of the Constitution has taken place within the preceding 10 years then, unless the Council decides otherwise, a general review shall be carried out.

On completion of a review, the Monitoring Officer will submit his/her recommendations to the Council's Standards Committee, who will then consider the report and recommend proposals to the Council. The Monitoring Officer will submit a further report to the Council if s/he considers it appropriate.

### 15.2 Monitoring & Review of the Constitution by the Monitoring Officer

A key role for the Monitoring Officer is to be aware of the strengths and weaknesses of the Council's Constitution and to make recommendations to the Council for ways in which it could be amended in order better to achieve the purposes set out in Article 1 of the Constitution.

In undertaking this task the Monitoring Officer may:-

- (1) observe meetings of different parts of the Member structure;
- (2) undertake an audit trail of a sample of decisions;
- (3) record and analyse issues raised with him/her by Members, officers, the public and other bodies or persons with a legitimate interest; and
- (4) compare practices in the Council with those in other comparable authorities, or national examples of best practice.

### 15.3 Procedures for Changes to the Constitution

- (1) **Changes to the Articles, Procedural Rules and Protocols, etc.**

Changes to the Articles of the Constitution; the Procedural Rules set out in Annex 2; the Codes of Practice and Protocols set out in Annexes 3; and the

Members' Allowances Scheme set out in Annex 4 can only be made by the full Council, which may not delegate this function.

Such proposals for changes may only be considered by the Council on receipt of a written report by:-

- (a) the Standards Committee; and/or
- (b) the Monitoring Officer.

Proposals for changes to the Articles of the Constitution will first be received by the Council without debate and referred to the next ordinary meeting of the Council.

- (2) Proposals for changes to any of the Procedural Rules set out in Annexes 2; to any of the Codes of Practice and Protocols set out in Annexes 3; and/or to the Members' Allowances Scheme set out in Annex 4 may be considered and determined forthwith by the Council. The Proper Officer shall be authorised to make minor textual changes to the Articles and Annexes to the Constitution where this is necessary as a consequence of:-

- (a) a decision properly made by the full Council to amend any part of them (for example cross-references, paragraph numbering, nomenclature, etc.);
- (b) legislation or a court order.

(3) **Changes to Other Parts of the Constitution**

To ensure transparency and accountability in the Council's decision-making processes, the Proper Officer shall ensure that the following parts of the Constitution are at all times kept up to date and accurately reflect the relevant decisions of the Council, its committees and sub-committees and of the Cabinet:-

- (a) Summary and Explanation: giving a summary and brief explanation of the main provisions of the Constitution;
- (b) Annex 1: setting out the responsibilities for functions and the delegations of those responsibilities;
- (c) Annex 5: setting out the current organisational structure of the Council.

(4) **Change in the Form of Executive Arrangements**

When drawing up any proposals for changing the form of executive arrangements, the Council must take reasonable steps to consult with local electors and other interested persons in the Borough, and have due regard to:-

- (a) the extent to which the change (if implemented) is likely to assist in securing improvement in the way in which the Council's functions are exercised in the interests of the well-being of the Borough's inhabitants; and
- (b) guidance issued by the Secretary of State in relation to these matters.

A change from the present 'Leader and Cabinet' form of executive arrangements to a form with an elected Mayor will require the Council to hold a referendum that will be binding on the Council.

**(5) Consultation on Other Constitutional Changes**

Where a proposal to change this Constitution does not involve a change in the form of executive arrangements (whether from a Leader and Cabinet form to an elected Mayoral form, or vice-versa), there will not normally be a requirement to consult with local electors and other interested persons in the Borough, unless the changes proposed will have substantial implications for all or a significant proportion of them.

Committees, Boards, etc.	Delegations
<p><b>Standards Committee</b></p>	
<p><b>TO BE UPDATED BY THE MONITORING OFFICER</b></p>	
<p><b>Membership:</b> <del>9 Councillors appointed by the Full Council Members of the Council, who shall not include the Mayor, Deputy Mayor or Leader of the Executive;</del> <u>3 independent representatives and 3 representatives of the parish Councils.</u></p>	
<p>1. <u>The Councillor Conduct Committee will have the following roles:-</u></p>	<p>None</p>
<ul style="list-style-type: none"> <li>•(a) <u>To promote and maintain high standards of conduct by Councillors and voting and non-voting co-opted members;</u></li> <li>(a)(b) <u>To advise the Council on the adoption or revision of the Councillor Code of Conduct or on revision to the adopted arrangements for investigation or making decisions on complaints;</u></li> <li>(b)(c) <u>To monitor the operation of the Councillor Code of Conduct;</u></li> <li>(e)(d) <u>To advise, train or arrange to train Councillors and voting and non-voting co-opted members on matters relating to the Councillor Code of Conduct;</u></li> <li>(d)(e) <u>The assessment against published criteria, investigation and hearing of allegations of Councillor misconduct and recommending any action which the Council has the power to take;</u></li> <li>(e)(f) <u>The adoption of any procedures necessary in order to undertake any of the above functions.</u></li> </ul>	
<p><del>(b) to monitor and advise the Council about the operation of its Code of Conduct in the light of best practice, changes in the law, guidance from the Standards Board and recommendations of case tribunals under section 80 of the Local Government Act 2000.</del></p>	<p>None</p>
<p>2. To ensure that:-</p>	
<p>(a) all Members of the Council have access to training in all aspects of the Member Code of Conduct set out in Annex 3.2 to this Constitution;</p>	<p>None</p>
<p>(b) this training is actively promoted; and</p>	<p>None</p>
<p>(c) Members are aware of the standards expected from local Councillors under the Code.</p>	<p>None</p>

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**Annex 1.2:** Responsibilities delegated to Committees and Boards of the Council

3. (a) to grant dispensations to Councillors and Co-opted Members from requirements relating to interests set out in the Member Code of Conduct in Annex 3.2 to this Constitution;
- (b) to grant dispensations in respect of politically restricted posts pursuant to the Local Government and Public Involvement in Health Act 2007.

4. To deal with ~~any reports~~ complaints in the following way:-

(a) The Committee will receive allegations that a Councillor or voting or non-voting co-opted member of the Council or the 6 Parish Councils has breached the relevant Councillor Code of Conduct.

(b) Upon receipt of each allegation and any accompanying report by the Monitoring Officer, the Committee shall decide either:

(i) to refer the allegation to the relevant Leader and Whip of a political group for resolution;

(ii) to refer the allegation to another body;

(iii) to refer the allegation to the Monitoring Officer for informal resolution such as the provision of training;

(iv) to refer the allegation to the Monitoring Officer for investigation of the allegation;

(v) to decide that no action should be taken in respect of the allegation;

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

(c) The Committee shall state reasons for its decision.

5. When considering the outcome of an investigation:-

(a) If the Committee decides to refer the allegation to the Monitoring Officer for investigation it shall receive the report of any investigator and the opinion of the Independent Person.

(b) The Committee may on receipt of the report, the opinion and any written representations decide whether a breach of the Councillor Code of Conduct has occurred and if so what action to recommend.

(c) The Committee may on hearing all relevant parties and in accordance with an agreed procedure, decide whether a breach of the relevant Councillor Code of Conduct has occurred and if so what action to recommend.

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

~~from a case tribunal or interim case tribunal and any report from the Monitoring Officer on any matter which is referred by an Ethical Standards Officer (through Standards for England) to the Monitoring Officer.~~

6. To exercise the functions detailed in paragraphs 1 to 4 above None in relation to the Parish Councils wholly or mainly in the Council's area and the Members of those Parish Councils.

Annex 1.2: Responsibilities delegated to Committees and Boards of the Council

7. (a) to advise the Council on matters relating to periodic electoral reviews, local elections, electoral registration, boundaries and representation, and electoral matters pertaining to Parish Councils;	None
(b) oversight and periodic review of the Council's - <ul style="list-style-type: none"> <li>• "Whistleblowing" Policy;</li> <li>• Policies for handling complaints;</li> <li>• Constitution.</li> </ul>	None
8. (a) oversight and periodic review of the protocol for member and authority employee relations;	
(b) to consider and to advise the Council upon complaints received through the Council's complaints procedures, and in particular reports from the Local Government Ombudsman;	
<del>(c) to advise the Council upon appointment of independent members and parish Councillors and to delegate to the Monitoring Officer such powers to recruit independent members and parish Councillors as the Committee sees fit;</del>	
9. <del>(a) to appoint an Assessment Sub-Committee and a Review Sub-Committee to facilitate the Local Assessment of complaints pursuant to the Standards Committee (England) Regulations 2008 or any successor enactment;</del>	
<del>(ab) to appoint such further sub-committees and panels as it deems fit for the proper performance of its duties as a Standards Committee.</del>	



Committees, Boards, etc.	Delegations
<p><b>Assessment Sub-Committee</b></p> <p><i>Membership: Three members of the Standards Committee selected by the Monitoring Officer, subject to 4 below.</i></p> <p>1. <del>(a) the Assessment Sub-Committee is established to receive allegations that a member of the authority or a member of a parish Council in its area has failed, or may have failed, to comply with the authority's Code of Conduct;</del></p> <p><del>(b) upon receipt of each allegation and any accompanying report by the Monitoring Officer, the Sub-Committee shall make an initial assessment of the allegation and shall then do one of the following:</del></p> <ul style="list-style-type: none"> <li><del>• refer the allegation to the Monitoring Officer, with an instruction that he arrange a formal investigation of the allegation, or directing that he arrange training, conciliation or such appropriate alternative steps as permitted by regulations;</del></li> <li><del>• refer the allegation to Standards for England;</del></li> <li><del>• decide that no action should be taken in respect of the allegation; or</del></li> <li><del>• where the allegation is in respect of a person who is no longer a member of the authority, but is a member of another relevant authority, refer the allegation to the Monitoring Officer of that other relevant authority;</del></li> </ul> <p><del>and shall instruct the Monitoring Officer to take reasonable steps to notify the person making the allegation and the member concerned of that decision.</del></p> <p>2. <del>Upon completion of an investigation by the Monitoring Officer, the Sub-Committee shall be responsible for determining whether:</del></p> <ul style="list-style-type: none"> <li><del>• it accepts the Monitoring Officer's finding of no failure to observe the Code of Conduct;</del></li> <li><del>• the matter should be referred for consideration at a hearing before the Standards Committee; or a specially constituted Sub-Committee of the Standards Committee;</del></li> <li><del>• the matter should be referred to Standards for England.</del></li> </ul> <p>3. <del>The Sub-Committee shall give reasons for any of its resolutions.</del></p> <p>4. <del>(a) the Sub-Committee shall be chaired by an independent member of the Standards Committee;</del></p>	

**Annex 1.2:** Responsibilities delegated to Committees and Boards of the Council

- ~~— (b) the quorum for a meeting of the Sub-Committee shall be three members;~~
- ~~— (c) a parish member must sit on any Sub-Committee considering a complaint regarding a parish Councillor.~~

Committees, Boards, etc.	Delegations
<p><b>Review Sub-Committee</b></p> <p><i><b>Membership:</b> <del>Three members of the Standards Committee selected by the Monitoring Officer, subject to 3 below.</del></i></p> <p><del>1. (a) the Review Sub-Committee is established to review a decision of the Assessment Sub-Committee that no action be taken in respect of an allegation.</del></p> <p><del>— (b) upon receipt of each such request and any accompanying report by the Monitoring Officer, the Sub-Committee shall review the decision of the Assessment Sub-Committee and shall then do one of the following:</del></p> <ul style="list-style-type: none"> <li><del>• refer the allegation to the Monitoring Officer, with an instruction that he arrange a formal investigation of the allegation, or directing that he arrange training, conciliation or such appropriate alternative steps as permitted by regulations;</del></li> <li><del>• refer the allegation to Standards for England;</del></li> <li><del>• decide that no action should be taken in respect of the allegation; or</del></li> <li><del>• where the allegation is in respect of a person who is no longer a member of the authority, but is a member of another relevant authority, refer the allegation to the Monitoring Officer of that other relevant authority;</del></li> </ul> <p><del>— and shall instruct the Monitoring Officer to take reasonable steps to notify the person making the allegation and the member concerned of that decision.</del></p> <p><del>2. — the Sub-Committee shall give reasons for any of its resolutions.</del></p> <p><del>3. (a) the Sub-Committee shall be chaired by an independent member of the Standards Committee;</del></p> <p><del>— (b) the quorum for a meeting of the Sub-Committee shall be three members;</del></p> <p><del>— (c) a parish member must sit on any Sub-Committee considering a review in respect of a complaint regarding a parish Councillor;</del></p> <p><del>— (d) a member will be ineligible to sit on a Review Sub-Committee if he sat on the Assessment Sub-Committee which made the decision under review.</del></p>	

Committees, Boards, etc.	Delegations
<p><b>Terms of reference for the Hearings Sub-Committee</b></p> <ol style="list-style-type: none"> <li data-bbox="161 495 874 663">1. <del>In the event that a complaint is referred for a hearing, the Hearings Sub-Committee shall be convened to hear and determine any allegation that an elected or co-opted member of the Council or a member of one of the parish Councils within the borough has failed to comply with the Code of Conduct.</del></li> <li data-bbox="161 685 874 909">2. <del>The Hearings Sub-Committee shall comprise three members of the Standards Committee, one of whom shall be a parish Councillor, one of whom shall be a borough Councillor and one of whom shall be an independent member of the Standards Committee. The independent member shall act as chair. For the avoidance of doubt, members of the Assessment and Review Sub-Committees may sit on the Hearings Sub-Committee.</del></li> <li data-bbox="161 931 874 976">3. <del>The quorum for a meeting of the Hearings Sub-Committee shall be three members.</del></li> <li data-bbox="161 999 874 1111">4. <del>The Hearings Sub-Committee shall meet when summoned by the Monitoring Officer to hear and determine any allegation against an elected or co-opted member of the Council or of one of the parish Councils within the borough.</del></li> <li data-bbox="161 1133 874 1491">5. <del>Following a hearing of a complaint the Hearings Sub-Committee shall make a finding, being:</del> <ol style="list-style-type: none"> <li data-bbox="201 1211 874 1256">(a) <del>that the member who was the subject of the hearing did not fail to comply with the Code of Conduct;</del></li> <li data-bbox="201 1279 874 1391">(b) <del>that the Member who was the subject of the hearing failed to comply with the Code of Conduct but that no action needs to be taken in respect of the matters which were considered at the hearing; or</del></li> <li data-bbox="201 1413 874 1491">(c) <del>that the Member who was the subject of the hearing failed to comply with the Code of Conduct and that a sanction should be imposed.</del></li> </ol> </li> <li data-bbox="161 1514 874 1570">6. <del>The Hearings Sub-Committee may impose sanctions as permitted by the regulations from time to time in force.</del></li> </ol>	

## Annex 2.1: Council Procedure Rules

### 9. Notice of and Summons to Meetings

- 9.1 The Proper Officer will give notice to the public of the time and place of any meeting of the Council or its committees and sub-committees in accordance with the Access to Information Rules.
- 9.2 At least five clear days before a meeting, the Proper Officer will send to every Member of the Council, or to every Member of the committee or sub-committee as the case may be, a summons signed by him or her by e-mail and a hard copy will be available for collection by Members.
- 9.3 The summons will -
- (1) give the date, time and place of the meeting; and
  - (2) specify the business to be transacted; and
  - (3) be accompanied by such reports as are available.
- 9.4 If, due to lack of business, it appears to the Proper Officer that it would be inconvenient to summon any meeting of a committee or sub-committee of the Council then s/he may, in consultation with the Chair of that committee or sub-committee, cancel the meeting.

### 10. Chair of Meeting

- 10.1 In the absence of the Chair, the Vice-Chair will preside at the meeting. If the Vice Chair is also absent, the meeting will appoint a Member to preside for that meeting only.
- 10.2 The person presiding at the meeting may exercise any power or duty of the Chair in relation to that meeting.

### 11. Quorum

- 11.1 Except where authorised otherwise by a statute, the quorum of a meeting will be one quarter of the number of Members entitled to attend and vote on the matters being considered at that meeting. No quorum for a committee or board shall be less than three Members. The quorum for a sub-committee or Panel with seven or fewer members shall be two members. (The Council has agreed a quorum for the Standards Committee will be 3 members.)
- 11.2 During any meeting, if the Chair or other person presiding counts the number of Members present and declares there is not a quorum present, then the meeting will adjourn for 15 minutes.

- 11.3 If, after 15 minutes, the Chair or other person presiding counts the number of Members present and declares there is not a quorum present, then the meeting will end.
- 11.4 If the meeting ends in accordance with paragraph 11.3 above, any remaining business will, regardless of any other provisions of these Rules, be considered at a time and date fixed by the Chair. If s/he does not fix a date, the remaining business will be considered at the next ordinary meeting.

## Annex 3.8: Protocol for the Appointment of a Standards Committee

### TO BE UPDATED BY THE MONITORING OFFICER

#### 1. Scope

This Protocol governs the appointment of Members "independent persons" and parish representatives to serve on the Council's Standards Committee in accordance with Article 9 of this Constitution.

#### 2. Size of the Committee

The Standards Committee shall comprise of nine ~~twelve~~ elected Members from the following categories of Gravesham Borough Council appointed by the Full Council. Not more than one Member of the Cabinet shall be appointed to the Standards Committee.

2.1 Six Members shall be elected Members of Gravesham Borough Council appointed by the Full Council. Not more than one Member of the Cabinet shall be appointed to the Standards Committee.

2.2 Three Members shall be appointed from the six parish councils within the Gravesham Borough Council area and shall be elected parish councillors.

2.3 Three Members shall be "independent persons" appointed in accordance with the procedures set out in this Protocol.

Substitutes may not be appointed for all three categories of membership.

#### 3. Appointment of parish representatives

The six parish councils will recommend to the Assistant Director (Communities) Service Manager (Communities) who they wish to appoint as their representatives on the Standards Committee. They must be serving parish councillors and must not be elected Members of Gravesham Borough Council.

#### 4. Appointment of independent persons

The three independent person(s) will be appointed by the Full Council in accordance with the following procedure.

4.1 The Assistant Director (Communities) Service Manager (Communities) Monitoring Officer shall arrange for an advertisement to be placed in at least one local newspaper inviting written applications for the post of independent person to advise on the Standards Committee in relation to complaints regarding Councillors.

4.2 Persons who have been officers or Members of Gravesham Borough Council within the previous five years will not be eligible for appointment.

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- 4.3 Persons who are relatives or close friends of a Member or officer of Gravesham Borough Council will not be eligible for appointment.
- 4.4 The Monitoring Officer ~~and Vice-Chair~~ shall draw up a short list of applicants, in consultation with the ~~Assistant Director (Communities)~~ Service Manager (Communities).
- 4.5 The short-listed applicants shall be invited for interview by the Monitoring Officer Standards Committee and the Service Manager (Communities), who will then make recommendations for appointment to the full Council.
- 4.6 ~~Independent persons will normally only serve on the Standards Committee once their appointment has been agreed by the Full Council.~~



## 4. Citizens' Rights

- 4.1 Citizens have a number of rights in their dealings with the Council. These are set out in more detail in Article 3 of this Constitution. Some of these are legal rights, whilst others depend on the Council's own processes. The Citizens' Advice Bureau (CAB) can advise on individuals' legal rights.
- 4.2 Where members of the public have a contract with the Council under which the Council agrees to do certain things, for example as a Council tenant, they have additional rights. These are not covered in this Constitution.
- 4.3 Citizens have the right to:-
- (a) vote at local elections if they are registered;
  - (b) contact their local Councillor about any matters of concern to them;
  - (c) have access to a copy of this Constitution;
  - (d) attend meetings of the full Council, and its Committees, Boards and Panels except where confidential or exempt matters are being discussed;
  - (e) attend meetings of the Cabinet when Key Decisions are being decided or discussed;
  - (f) petition to request a referendum on a Mayoral form of executive;
  - (g) attend meetings of any Scrutiny Committee and, by invitation of a committee, contribute to investigations or reviews undertaken by them;
  - (h) from the Cabinet's Forward Plan, find out what major decisions are to be discussed or decided by the Cabinet and when;
  - (i) see agendas reports and background papers and records of decisions made by the Council, Cabinet, Committees, Boards and Panels (but excluding access to confidential/exempt information);
  - (j) complain to the Council about Council services – the Council encourages its customers through its Corporate Complaints Procedure to voice their concerns as an opportunity to put things right for the customer and to improve services;
  - (k) complain to the Local Government Ombudsman if they think the Council has not followed its procedures properly. However, they should only do this after using the Council's Corporate Complaints Procedure;
  - (l) complain to the Standards Committee if they have evidence which they think shows that a Councillor has not followed the Member Code of Conduct;
  - (m) inspect the Council's accounts and to make their views known to the external auditor.

- 4.4 The Council welcomes participation by its citizens in its work. For further information on your rights as a citizen, please contact the Council's Committee and Electoral Services Department on 01474 33 72 47.

## **Article 3 – Citizens and the Council**

### **3.1 Citizens' Rights**

Citizens have the following rights. Their rights to information and to participate are explained in more detail in the Access to Information Rules as set out in Annex 2.2 to this Constitution.

#### **(1) Voting and Petitions**

Citizens who are on the electoral roll for the Borough have the right to vote and to sign a petition, requesting a referendum for an elected Mayor form of constitution. Residents and those who work or study within the Borough also have the right to sign petitions.

#### **(2) Information**

Citizens have the right to:-

- (a) attend meetings of the Council and its Committees, Boards and sub-committees, except where confidential or exempt information is likely to be disclosed and the meeting is therefore held in private;
- (b) attend meetings of the Cabinet when “Key Decisions” are being considered, except where confidential or exempt information is likely to be disclosed and the meeting is therefore held in private;
- (c) find out from the Council’s website what “Key Decision(s)” will be taken by the Cabinet, or by any bodies or individuals to whom the Cabinet may have delegated the exercise of any of its functions, and when it is expected those decisions will be taken;
- (d) see reports and background papers (excluding confidential/exempt information) and any records of decisions made by the Council, Cabinet, Committees, Boards and sub-Committees; and
- (e) inspect the Council’s accounts and make their views known to the external auditor.

#### **(3) Participation**

Citizens have the right to participate in the Council’s question time and (on invitation by the committee or by the committee Chair) to contribute to investigations by a Scrutiny Committee.

Public speaking is allowed at meetings of the Regulatory Board (Planning).

#### **(4) Complaints**

Citizens have the right to complain to:-

- (a) the Council itself under its Complaints Procedure;

- (b) the Local Government Ombudsman, after using the Council's Complaints Procedure;
- (c) the Standards Committee about an alleged breach of the Member Code of Conduct set out in Annex 3.1 to this Constitution. These complaints should be addressed to the Monitoring Officer, Gravesham Borough Council, Civic Centre, Windmill Street, Gravesend, Kent, DA12 1AU;

### **3.2 Citizens' Conduct**

Citizens must not be violent, abusing or threatening to Councillors or Officers and must not wilfully harm things owned by the Council, Councillors or Officers.

## **Article 7 - Leader and Cabinet Executive**

### **7.1 Role and Functions**

The Council has adopted a form of executive arrangements known as a new style "Leader and Cabinet Executive". The various parts of this Constitution that together comprise the Council's executive arrangements are set out in Annex 1.18 to this Constitution.

The Executive will exercise all of the Council's functions which are not the responsibility, whether by law or under this Constitution, of any other part of the Council.

### **7.2 Form and Composition**

(1) The Executive will comprise:-

- 1.1 a Leader elected by the Council at its Annual Meeting in May 2011 and at every post election Annual Meeting (under whole Council elections) thereafter;
- 1.2 no more than ten Cabinet Members, including the Leader and the Deputy Leader.

### **7.3 Leader of the Executive**

- (1) The term of office of the Leader starts on the day of his/her election as Leader and ends on the day of the next post election Annual Meeting (under whole Council elections) unless, before that day, he/she:-
  - 1.1 is removed from office or resigns;
  - 1.2 ceases to be a Councillor; or
  - 1.3 is disqualified from being a Councillor.
- (2) The Leader will be a Councillor of the Borough of Gravesham and will be elected by the Council to serve for a term of four years or until the Annual Meeting following the next ordinary Council elections.
- (3) During his/her term of office the Leader will continue to hold office as a Councillor and accordingly, any enactment which provides for earlier retirement as a Councillor will not apply.
- (4) The Council will have the power to remove the Leader from office before the end of his/her four year term by way of resolution. At any meeting of the Full Council a Councillor may propose that "the Council has no confidence in the Leader". If carried by a simple majority of those Councillors present and voting, the Leader will be removed from office.

(5) If the Council passes a resolution to remove the Leader, a new Leader will be elected:-

5.1 at the same meeting at which the Leader is removed from office; or

5.2 at a subsequent meeting.

#### **7.4 Appointment of the Cabinet and scheme of delegation**

- (1) The Leader will decide the size of his/her Cabinet (subject to a maximum of ten, including the Leader and Deputy Leader) and will appoint Cabinet Members from among the serving Councillors. The Leader may replace or remove Cabinet Members at any time.
- (2) All executive functions of the Council will be vested in the Leader. The Leader may exercise those functions himself/herself, or may delegate specified executive functions to be exercised by the Cabinet collectively, a Cabinet Committee, an individual Cabinet Member or an Officer. The Leader may revoke such delegations at any time.
- (3) Delegation of executive function(s) to be exercised by a Cabinet Member or by a Ward Councillor in accordance with Section 236 of the Local Government and Public Involvement in Health Act 2007; will be at the discretion of the Leader.
- (4) The Leader will report to Council on all appointments and changes to the Cabinet (Executive) and delegation of executive functions of the Council.

Neither the Mayor nor Deputy Mayor may be elected as Leader of the Executive or be appointed to the Cabinet.

The Leader of the Executive may not be appointed to any Scrutiny Committee or to the Standards Committee. Other Members of the Cabinet may not be Chair of the Standards Committee and may not be appointed to any Scrutiny Committee. Not more than two Members of the Cabinet (or the nearest whole number equivalent to 20 per cent of the total membership of the Regulatory Board (Planning), whichever is the lesser figure) may be appointed to the Regulatory Board (Planning) or such other committee or sub-committee as may be appointed to determine matters relating to the grant of licences and statutory consents or enforcement action against persons. No Member of the Cabinet so appointed shall be the Chair or Vice-Chair of the Regulatory Board (Planning) nor of any other committee or sub-committee discharging similar functions.

The nearest whole number equivalent to 50 per cent of the total membership of the Appointments Board will be selected by the Leader of the Executive for appointment to the Appointments Board (or such other committee as may be appointed to determine matters relating to the appointment of officers).

Not less than three Members of the Appointments Board who have been selected by the Leader of the Executive (or the nearest whole number equivalent to 50 per cent of the total membership of an Appointments Panel constituted from the membership of the Appointments Board, whichever is the lesser figure) will be appointed to an

Appointments Panel or any other body authorised to make an appointment to the Council's staff.

There shall not be any co-optees, deputies or substitutes for Members of the Cabinet, excepting that Members of the Cabinet (including the Leader) may be substitutes for each other on any sub-Committees, Panels or Working Groups established by, and reporting to, the Cabinet.

## **7.5 Deputy Leader**

- (1) The Leader will appoint a Deputy Leader from among the Cabinet Members. The Leader may replace the Deputy Leader at any time, but otherwise the Deputy Leader will remain in post for the duration of the Leader's term of office.
- (2) The Deputy Leader will have authority to exercise the Leader's powers only in the event that the Leader is unable to act at any time or the office of Leader is vacant.
- (3) If the Deputy Leader is unable to act or the office is vacant, the Cabinet (Executive) must act in the Leader's place or arrange for a Member of the Cabinet (Executive) to do so.

## **7.6 Proceedings of the Cabinet**

Proceedings of the Leader and Cabinet Executive shall take place in accordance with the Executive Procedure Rules set out in Annex 2.4 to this Constitution.

## **7.7 Delegation of Powers**

The Service Manager (Communities) shall maintain a list setting out clearly which Members of the Cabinet, sub-committees of the Cabinet, officers of the Council, area committees or joint arrangements with other local authorities carry current responsibilities for the discharge of functions delegated by the Cabinet, together with the current allocation of portfolios amongst Cabinet Members. This list, as amended from time to time, shall be incorporated within Annex 1 to this Constitution and shall be made publicly available.

## **7.8 Cabinet Committees**

The Leader may appoint Cabinet Committees to advise it about carrying out its functions. Such Committees, and appointments of individuals to them, may exist for a fixed or unspecified period, but in any event will cease upon a change in the political control of the Council or at the Annual Meeting of the Council immediately following a general election of the entire Council.

When establishing a Cabinet Committee, the Leader shall also state the Committee's Terms of Reference and composition, which shall be made publicly available. Appointments and terminations of appointments of individuals to existing committees shall similarly be made public.

Such Committees may be made up of any mixture of Councillors. Council officers may attend meetings of such Committees to provide information.

Cabinet Committees need not comply with the legislation on political proportionality, but they should reflect a broad cross-section of both the Council and the wider community. Committees should be constituted having regard to the particular knowledge and skills of those appointed.

Any written reports made by a Cabinet Committee to the Cabinet shall be made publicly available, except where they contain confidential and/or exempt information.

## **7.9 Ethics and Probity**

Members of the Cabinet will be treated no differently from other Councillors in that they will be subject to the Member Code of Conduct set out in Annex 3.1 to this Constitution, and to investigation should any allegations of breaches of the Code be received.

Members of the Cabinet will be required to declare and register their interests and, if appropriate, to seek local dispensations from the Standards Committee.

## **7.10 Officer Support**

Officers are employed by the Council to work for and serve the Council as a whole. The Cabinet will respect the political neutrality of Officers.



## **Article 9 – The Standards Committee**

### **Explanatory Comment**

Standards Committees have an important role in strengthening and maintaining the high standards of conduct required of Members and officers.

#### **9.1 Standards Committee**

The Council has established a Standards Committee.

#### **9.2 Composition**

- (a) Membership. The Standards Committee is composed of nine Members.
- (b) Political Balance. The Standards Committee will be politically balanced.
- (c) Quorum. The Quorum of the Councillor Conduct Committee shall be three Councillors.
- (d) Chairing the Committee. A Member of the Executive may not chair the Committee.

#### **9.3 Role and function**

For the Standards Committee Terms of Reference see Annex 1.2 of the Constitution.

**9.4** The Committee will receive allegations that a Councillor or voting or non-voting co-opted member of the Council of the 6 Parish Councils has breached the relevant Members Code of Conduct and decide whether or not an investigation is to be varied out in relation to those complaints.

**9.5** If the Committee decides to refer the allegation to the Monitoring Officer for investigation it shall receive the report of any investigator and the opinion of the Independent Person. The Committee may on receipt of the report, the opinion and any written representations decide whether a breach of the Councillor Code of Conduct has occurred and if so what action to recommend.

## **Article 15 – Review and Revision of the Constitution**

### **15.1 Duty to Monitor and Review the Constitution**

The Council's Monitoring Officer will monitor the operation of the Constitution to ensure that its aims and principles are given full effect.

The Monitoring Officer will also carry out a general or partial review (as appropriate) of the Constitution in the following circumstances:-

- (1) at the direction of a court or of the Secretary of State;
- (2) on the recommendation of the Local Government Ombudsman, the Council's external auditors or one of the Council's Statutory Officers appointed in accordance with Article 12.05 of this Constitution;
- (3) by a decision of the Council;
- (4) in the event that no general review of the Constitution has taken place within the preceding 10 years then, unless the Council decides otherwise, a general review shall be carried out.

On completion of a review, the Monitoring Officer will submit his/her recommendations to the Council's Standards Committee, who will then consider the report and recommend proposals to the Council. The Monitoring Officer will submit a further report to the Council if s/he considers it appropriate.

### **15.2 Monitoring & Review of the Constitution by the Monitoring Officer**

A key role for the Monitoring Officer is to be aware of the strengths and weaknesses of the Council's Constitution and to make recommendations to the Council for ways in which it could be amended in order better to achieve the purposes set out in Article 1 of the Constitution.

In undertaking this task the Monitoring Officer may:-

- (1) observe meetings of different parts of the Member structure;
- (2) undertake an audit trail of a sample of decisions;
- (3) record and analyse issues raised with him/her by Members, officers, the public and other bodies or persons with a legitimate interest; and
- (4) compare practices in the Council with those in other comparable authorities, or national examples of best practice.

### **15.3 Procedures for Changes to the Constitution**

- (1) **Changes to the Articles, Procedural Rules and Protocols, etc.**

Changes to the Articles of the Constitution; the Procedural Rules set out in Annex 2; the Codes of Practice and Protocols set out in Annexes 3; and the

Members' Allowances Scheme set out in Annex 4 can only be made by the full Council, which may not delegate this function.

Such proposals for changes may only be considered by the Council on receipt of a written report by:-

- (a) the Standards Committee; and/or
- (b) the Monitoring Officer.

Proposals for changes to the Articles of the Constitution will first be received by the Council without debate and referred to the next ordinary meeting of the Council.

- (2) Proposals for changes to any of the Procedural Rules set out in Annexes 2; to any of the Codes of Practice and Protocols set out in Annexes 3; and/or to the Members' Allowances Scheme set out in Annex 4 may be considered and determined forthwith by the Council. The Proper Officer shall be authorised to make minor textual changes to the Articles and Annexes to the Constitution where this is necessary as a consequence of:-

- (a) a decision properly made by the full Council to amend any part of them (for example cross-references, paragraph numbering, nomenclature, etc.);
- (b) legislation or a court order.

(3) **Changes to Other Parts of the Constitution**

To ensure transparency and accountability in the Council's decision-making processes, the Proper Officer shall ensure that the following parts of the Constitution are at all times kept up to date and accurately reflect the relevant decisions of the Council, its committees and sub-committees and of the Cabinet:-

- (a) Summary and Explanation: giving a summary and brief explanation of the main provisions of the Constitution;
- (b) Annex 1: setting out the responsibilities for functions and the delegations of those responsibilities;
- (c) Annex 5: setting out the current organisational structure of the Council.

(4) **Change in the Form of Executive Arrangements**

When drawing up any proposals for changing the form of executive arrangements, the Council must take reasonable steps to consult with local electors and other interested persons in the Borough, and have due regard to:-

- (a) the extent to which the change (if implemented) is likely to assist in securing improvement in the way in which the Council's functions are exercised in the interests of the well-being of the Borough's inhabitants; and
- (b) guidance issued by the Secretary of State in relation to these matters.

A change from the present 'Leader and Cabinet' form of executive arrangements to a form with an elected Mayor will require the Council to hold a referendum that will be binding on the Council.

**(5) Consultation on Other Constitutional Changes**

Where a proposal to change this Constitution does not involve a change in the form of executive arrangements (whether from a Leader and Cabinet form to an elected Mayoral form, or vice-versa), there will not normally be a requirement to consult with local electors and other interested persons in the Borough, unless the changes proposed will have substantial implications for all or a significant proportion of them.

Committees, Boards, etc.	Delegations
<b>Standards Committee</b>	
<b>TO BE UPDATED BY THE MONITORING OFFICER</b>	
<i>Membership: 9 Councillors appointed by the Full Council, who shall not include the Mayor, Deputy Mayor or Leader of the Executive.</i>	
<p>1. The Councillor Conduct Committee will have the following roles:-</p> <ul style="list-style-type: none"> <li>(a) To promote and maintain high standards of conduct by Councillors and voting and non-voting co-opted members;</li> <li>(b) To advise the Council on the adoption or revision of the Councillor Code of Conduct or on revision to the adopted arrangements for investigation or making decisions on complaints;</li> <li>(c) To monitor the operation of the Councillor Code of Conduct;</li> <li>(d) To advise, train or arrange to train Councillors and voting and non-voting co-opted members on matters relating to the Councillor Code of Conduct;</li> <li>(e) The assessment against published criteria, investigation and hearing of allegations of Councillor misconduct and recommending any action which the Council has the power to take;</li> <li>(f) The adoption of any procedures necessary in order to undertake any of the above functions.</li> </ul>	None
<p>2. To ensure that:-</p> <ul style="list-style-type: none"> <li>(a) all Members of the Council have access to training in all aspects of the Member Code of Conduct set out in Annex 3.2 to this Constitution;</li> <li>(b) this training is actively promoted; and</li> <li>(c) Members are aware of the standards expected from local Councillors under the Code.</li> </ul>	None None None
<p>3. (a) to grant dispensations to Councillors and Co-opted Members from requirements relating to interests set out in the Member Code of Conduct in Annex 3.2 to this Constitution;</p> <p>(b) to grant dispensations in respect of politically restricted posts pursuant to the Local Government and Public Involvement in Health Act 2007.</p>	

4. To deal with complaints in the following way:-
- (a) The Committee will receive allegations that a Councillor or voting or non-voting co-opted member of the Council or the 6 Parish Councils has breached the relevant Councillor Code of Conduct.
  - (b) Upon receipt of each allegation and any accompanying report by the Monitoring Officer, the Committee shall decide either:
    - (i) to refer the allegation to the relevant Leader and Whip of a political group for resolution;
    - (ii) to refer the allegation to another body;
    - (iii) to refer the allegation to the Monitoring Officer for informal resolution such as the provision of training;
    - (iv) to refer the allegation to the Monitoring Officer for investigation of the allegation;
    - (v) to decide that no action should be taken in respect of the allegation;and shall ask the Monitoring Officer to notify the person making the allegation and the member concerned of that decision.
  - (c) The Committee shall state reasons for its decision.
5. When considering the outcome of an investigation:-
- (a) If the Committee decides to refer the allegation to the Monitoring Officer for investigation it shall receive the report of any investigator and the opinion of the Independent Person.
  - (b) The Committee may on receipt of the report, the opinion and any written representations decide whether a breach of the Councillor Code of Conduct has occurred and if so what action to recommend.
  - (c) The Committee may on hearing all relevant parties and in accordance with an agreed procedure, decide whether a breach of the relevant Councillor Code of Conduct has occurred and if so what action to recommend.
  - (d) The Committee shall state reasons for its decision.
6. To exercise the functions detailed in paragraphs 1 to 4 above in relation to the Parish Councils wholly or mainly in the Council's area and the Members of those Parish Councils. None

- |  |      |
|--|------|
| 7. (a) to advise the Council on matters relating to periodic electoral reviews, local elections, electoral registration, boundaries and representation, and electoral matters pertaining to Parish Councils; | None |
| (b) oversight and periodic review of the Council's - <ul style="list-style-type: none"><li>• "Whistleblowing" Policy;</li><li>• Policies for handling complaints;</li><li>• Constitution.</li></ul>          | None |
| 8. (a) oversight and periodic review of the protocol for member and authority employee relations;  |      |
| (b) to consider and to advise the Council upon complaints received through the Council's complaints procedures, and in particular reports from the Local Government Ombudsman.                               |      |
| 9. (a) to appoint such further sub-committees and panels as it deems fit for the proper performance of its duties as a Standards Committee.  |      |

## **Annex 2.1: Council Procedure Rules**

### **9. Notice of and Summons to Meetings**

- 9.1 The Proper Officer will give notice to the public of the time and place of any meeting of the Council or its committees and sub-committees in accordance with the Access to Information Rules.
- 9.2 At least five clear days before a meeting, the Proper Officer will send to every Member of the Council, or to every Member of the committee or sub-committee as the case may be, a summons signed by him or her by e-mail and a hard copy will be available for collection by Members.
- 9.3 The summons will -
- (1) give the date, time and place of the meeting; and
  - (2) specify the business to be transacted; and
  - (3) be accompanied by such reports as are available.
- 9.4 If, due to lack of business, it appears to the Proper Officer that it would be inconvenient to summon any meeting of a committee or sub-committee of the Council then s/he may, in consultation with the Chair of that committee or sub-committee, cancel the meeting.

### **10. Chair of Meeting**

- 10.1 In the absence of the Chair, the Vice-Chair will preside at the meeting. If the Vice Chair is also absent, the meeting will appoint a Member to preside for that meeting only.
- 10.2 The person presiding at the meeting may exercise any power or duty of the Chair in relation to that meeting.

### **11. Quorum**

- 11.1 Except where authorised otherwise by a statute, the quorum of a meeting will be one quarter of the number of Members entitled to attend and vote on the matters being considered at that meeting. No quorum for a committee or board shall be less than three Members. The quorum for a sub-committee or Panel with seven or fewer members shall be two members. (The Council has agreed a quorum for the Standards Committee will be 3 members.)
- 11.2 During any meeting, if the Chair or other person presiding counts the number of Members present and declares there is not a quorum present, then the meeting will adjourn for 15 minutes.



- 11.3 If, after 15 minutes, the Chair or other person presiding counts the number of Members present and declares there is not a quorum present, then the meeting will end.
- 11.4 If the meeting ends in accordance with paragraph 11.3 above, any remaining business will, regardless of any other provisions of these Rules, be considered at a time and date fixed by the Chair. If s/he does not fix a date, the remaining business will be considered at the next ordinary meeting.

## **Annex 3.8: Protocol for the Appointment of a Standards Committee**

### **1. Scope**

This Protocol governs the appointment of Members to serve on the Council's Standards Committee in accordance with Article 9 of this Constitution.

### **2. Size of the Committee**

The Standards Committee shall comprise of nine elected Members of Gravesham Borough Council appointed by the Full Council. Not more than one Member of the Cabinet shall be appointed to the Standards Committee.

### **3. Appointment of independent persons**

The independent person(s) will be appointed by the Full Council in accordance with the following procedure.

- 3.1 The Monitoring Officer shall arrange for an advertisement to be placed in at least one local newspaper inviting written applications for the post of independent person to advise the Standards Committee in relation to complaints regarding Councillors.
- 3.2 Persons who have been officers or Members of Gravesham Borough Council within the previous five years will not be eligible for appointment.
- 3.3 Persons who are relatives or close friends of a Member or officer of Gravesham Borough Council will not be eligible for appointment.
- 3.4 The Monitoring Officer shall draw up a short list of applicants, in consultation with the Service Manager (Communities).
- 3.5 The short-listed applicants shall be invited for interview by the Monitoring Officer and the Service Manager (Communities), who will then make recommendations for appointment to the Full Council.

# Gravesham Borough Council's procedure for dealing with ~~Member~~Councillor Conduct complaints under the Localism Act 2011

## 1. Introduction

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

Gravesham Borough Council and the 6 Parish Councils have each adopted a Code of Conduct that is based on the seven principles of public life selflessness, integrity, objectivity, accountability, openness, honesty and leadership.

~~he Localism Act 2011 amended the way that Councils can deal with any concerns that are raised about the conduct of Councillors. These arrangements regarding Medway Councillors and Parish Councillors applied from 1 July 2011~~It is important to note that the Standards Committee can only look into complaints about a breach or potential breach of the Members' Councillor Code of Conduct. The Standards Committee will use this procedure to determine how to deal with complaints, having regard to the flowchart at Appendix A and the Screening Process Flowchart-Tables (attached at Appendix B4)

## 2. Presumptions

- Complaints should be settled quickly, efficiently and informally and in a way that represents value for money and takes into account the limited action that can be taken against a MemberCouncillor.
- Details of the allegations made against a MemberCouncillor should not be made public until the end of the process and only if there is an investigation (subject to the rules on access to information).
- If a complainant makes an allegation public before it is concluded that may bring an end to the process since that publicity ~~w~~ould be similar in gravity to the most serious action the Council could ultimately take of censure. This presumption will not apply in cases involving allegations of non-compliance with provisions in the Members' Code of Conduct relating to the registration and disclosure of Disclosable Pecuniary Interests as criminal proceedings may arise which cannot be discontinued by the Standards Committee or the Monitoring Officer irrespective of publicity surrounding the complaint.

- Any investigations will be completed quickly and where possible by correspondence.
- There will be recognition from the outset of any complaint that the action that can be recommended at the end of any process must be proportionate to the need to ensure effective administration of the Council, the welfare of its staff or the reputation of the Council.
- Where a complaint is capable of resolution by a Political Group or Groups these will be referred for such resolution to the Leader and Whip of such Group or Groups.
- Any resolution or decision by the Groups or Groups is final and cannot of itself give rise to a complaint except to the Local Government Ombudsman.

~~Where a complaint involves a Parish Councillor, that this will be referred to the Parish Council concerned for resolution.~~

### 3. Making a complaint

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

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

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

Perry Holmes, Monitoring Officer  
Gravesham Borough Council, Civic Centre, Windmill Street, Gravesend, Kent, DA12 1AU  
[perry.holmes@medway.gov.uk](mailto:perry.holmes@medway.gov.uk)

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

(N.B. – Gravesham Borough Council shares a Monitoring Officer with Medway Council which the reason for the Medway telephone number and email address.)

#### 4. You can expect:

- An acknowledgement of your complaint within 5 working days from the Monitoring Officer.
- That the Monitoring Officer will inform the subject Councillor that a complaint has been received (unless to do so would prevent proper consideration of the complaint).
- That you will be kept informed about the progress of your complaint.
- That only the Members on the Standards Committee will consider your complaint as the meeting will usually be~~it is~~ held in closed session~~'exempt session'~~, in order to preserve the confidentiality of the process.

#### 5. The Process

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

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

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

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

~~Is the conduct complained of older than 6 months?~~

~~———— (If complaint is made about an event that occurred 6 – 12 months ago, unless there are exceptional circumstances, it will not be investigated)\* see note below:~~

~~Is the complaint about a councillor when they were acting in that capacity?~~

~~On the face of the complaint is the conduct something, which is a potential breach of the Code of Conduct?~~

~~Is the complaint one that should be referred to another body to investigate?~~

~~Is the complaint about a Parish Councillor and it would be more appropriate for the issue to be resolved locally by the Parish Council?~~

~~Could the complaint be dealt with by a Political Group?~~

~~Is the complaint capable of being resolved by an investigation, bearing in mind the sanctions available?~~

~~Bearing in mind the circumstances of the complaint, would it be disproportionate to investigate?~~

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

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

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

5.3 In the **Independent Review** stage we will present all the information to an Independent Person, who has no links to the Council, to seek their opinion on how to proceed.

### **Assessment of Complaint – Independent Person’s views**

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

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

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

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

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

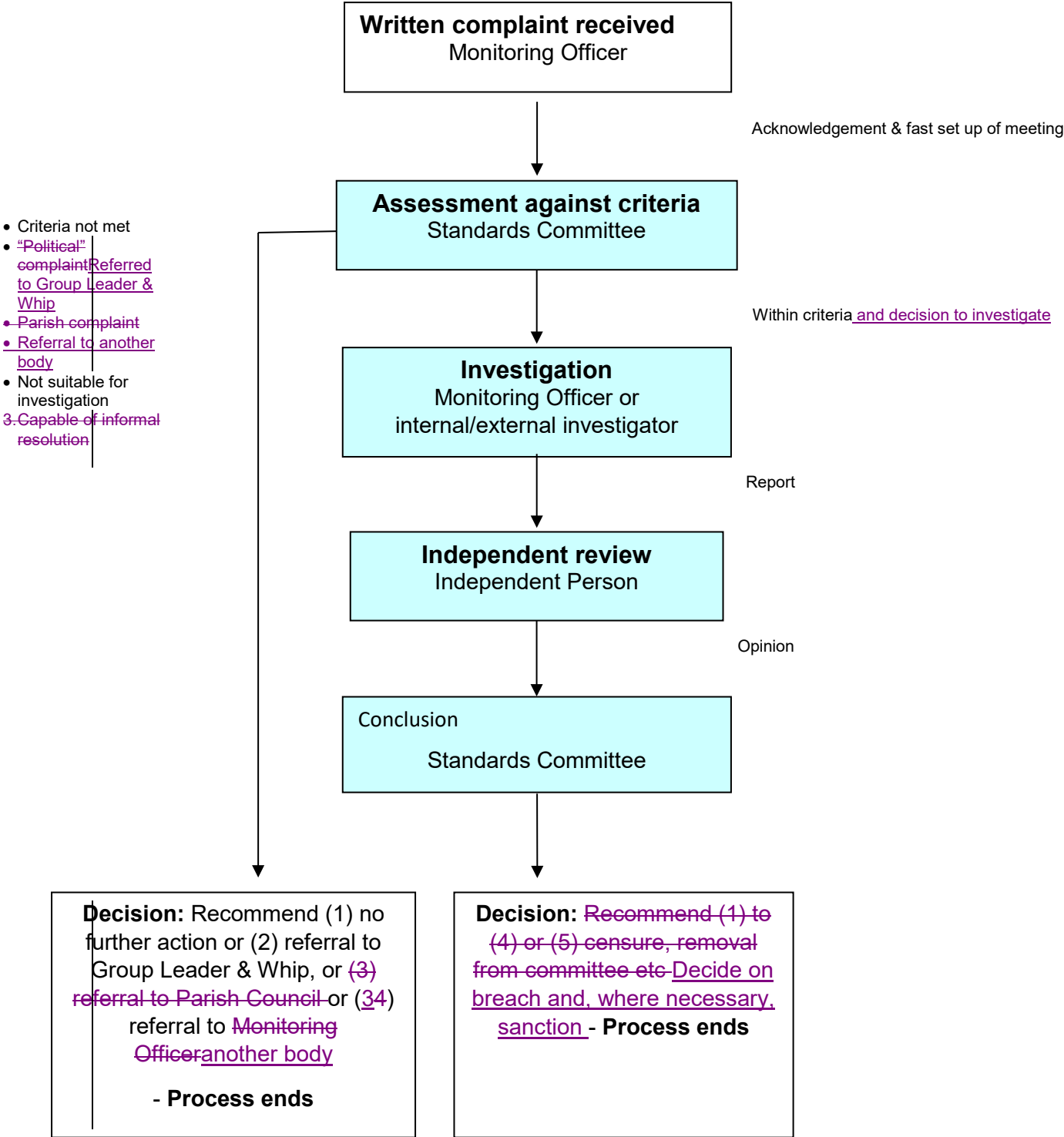
Before reaching its decision, the Complainant and subject Member have the right to make submissions as to the appropriate sanction (if any). Where the decision is communicated in writing, the Council will re-convene the Standards Committee Panel Hearing to consider the question of sanction. In such situations,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

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

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

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

COMPLAINTS PROCESS FLOWCHART





**GRAVESHAM BOROUGH COUNCIL SCREENING  
PROCESS FOR COUNCILLOR CONDUCT  
COMPLAINTS**

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

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

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

## Legal Jurisdiction Criteria Test

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

## GRAVESHAM BOROUGH COUNCIL

### COUNCILLOR CONDUCT COMPLAINT FORM

#### Before you submit your complaint

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

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

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

Telephone: 01634 332133

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

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

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

Title	First name	Last name	Council or authority name

2. Please provide us with a summary of your complaint

3. Please provide us with your name and contact details

<b>Title:</b>	
<b>First name:</b>	
<b>Last name:</b>	
<b>Address:</b>	
<b>Daytime telephone:</b>	
<b>Evening telephone:</b>	
<b>Mobile telephone:</b>	
<b>Email address:</b>	

4. Please tell us which best describes you:

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

### How will we deal with your complaint

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

In summary there are four main stages to our process;

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

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

**You can expect:**

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

**Details we would like from you**

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

- You should be specific, wherever possible, about exactly what you are alleging the member said or did. For instance, instead of writing that the member insulted you, you should state what it was they said.
- You should provide the dates of the alleged incidents wherever possible. If you cannot provide exact dates it is important to give a general timeframe.
- You should confirm whether there are any witnesses to the alleged conduct and provide their names and contact details if possible.
- You should provide information setting out why you believe the Councillor or the Co-opted Member of a Committee was acting in their capacity as a Councillor or a Co-opted Member. Having considered your complaint, if it is decided that the Councillor or a Co-opted Member was acting in a personal capacity, then your complaint will not be pursued because this would not amount to a breach of the Code of Conduct.
- You should provide any other relevant background information.

## **Additional Help**

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

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

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

For advice about the process we will follow please contact:

Perry Holmes  
Monitoring Officer  
Gravesham Borough Council  
Civic Centre  
Windmill Street  
Gravesend  
Kent  
DA12 1AU

01634 332133

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

# Standards Committee

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

### Background

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

### Relevant people

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

### Initial process

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



## Investigation

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

## Independent Person

14. The Independent Person will be invited to comment on the outcome of the investigation whether a breach has been found or not.
15. Where a breach has been found in the opinion of the Investigator and or the Independent Person, their report will be considered by the Committee before deciding on whether a breach of the Code of Conduct has happened.

## Pre- Committee Meeting process

16. Once the Investigator's report and the Independent Person's report have been received by the Monitoring Officer, the Subject MemberCouncillor and the Complainant will be notified of the date that the Committee will be considering the reports and making their final decisions.

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

### **The Committee Meeting.**

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

### **Meeting Procedure**

22. The meeting to consider the Investigator's report will be closed to the press and public after resolution where any of the conditions in the Local Government Act 1972 Schedule 12A are met. The complainant and the subject MemberCouncillor will be entitled to stay in the meeting if this decision is made.
23. The Monitoring Officer or their nominee will support the Committee to make their decision. Any advice given by the Monitoring Officer will be reported to all those present in the meeting.

24. The Chairman or the Monitoring Officer will confirm who is present.

25. If the subject MemberCouncillor declines to attend or cannot attend for some specified reason the Committee will decide whether to proceed in absence giving reasons.

26. The Chairman or Monitoring Officer will outline the procedure.

### **Decision on the facts**

27. The Investigating Officer if present or the Monitoring Officer will outline the Investigator's report and findings on the facts.

28. Through the Chairman the complainant, the subject MemberCouncillor or their representatives may ask questions of the Investigator if present on their findings on the facts.

29. The Committee may ask questions of the Investigator on their findings on the facts.

30. The complainant if present may address the Committee on the facts and call witnesses to the facts otherwise the Committee will consider the complainant's written comments. Witnesses who have not been previously notified to the Investigator and/or the Committee will not normally be allowed accept in exceptional circumstances.

31. The Committee may ask the complainant and any witnesses questions about the facts.

32. The subject MemberCouncillor or their representative if present may address the Committee on the facts and call witnesses to the facts otherwise the Committee will consider the subject Member'sCouncillors written comments. Witnesses who have not been previously notified to the Investigator and/or the Committee will not normally be allowed accept in exceptional circumstances.

33. The Committee may ask the subject MemberCouncillor and any witnesses questions about the facts.
34. The complainant and then the subject MemberCouncillor or their representative may make any final comments on the facts.
35. The Committee will retire to a separate room or ask everyone apart from the Committee Clerk to leave the room and make a decision on the facts of the case. They will return to the Committee room or invite everyone back and the Chairman will announce their decision with reasons.

### **Decision on breach**

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

### **Decision on sanction**

39. The subject MemberCouncillor or their representative will be invited to address the Committee on what sanction if any the Committee should decide for the breach of the Code of Conduct.
40. The Committee will consider the views of the Investigator and of the Independent Person and if present ask them questions if necessary.

41. The Committee will retire to a separate room or ask everyone apart from the ~~Democratic Services Officer~~ ~~Committee Clerk~~ to leave the room and make a decision on sanction for the breach of the Code of Conduct. They will return to the Committee room or invite everyone else back and the Chairman will announce their decision with reasons.

### Guidance on sanctions

42. When deciding what sanction if any to impose the Committee should consider the following matters together with any relevant matters to ensure that the sanction is proportionate to the Subject ~~Member's~~ ~~Councillor's~~ behaviour and will ensure compliance with the Code of Conduct in the future.

43. Features that could make the matter more serious or aggravating factors could include:

- Dishonesty
- Continued denial of the facts
- Failure to heed officer advice
- A pattern of behaviour which the Committee has ~~been dealt with~~ ~~considered~~ before ~~by the Committee~~
- Breach of trust
- Likelihood of repetition

44. Features that could make the matter less serious or mitigating factors could include:

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

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

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

### **After the meeting**

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

### **Appeal**

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

December 2018 ~~December 2014~~

# **LOCALISM ACT 2011 – s.34 CRIMINAL OFFENCE INVESTIGATIONS IN KENT AND MEDWAY**

## **1. Security protective marking**

1.1 Not restricted.

## **2. Summary of changes**

2.1 This is the first document in this category - therefore no historical revisions.

## **3. Application**

3.1 This policy applies in Kent and Medway, to the handling and investigation of alleged criminal offences created by Section 34 of the Localism Act 2011 and specifically related to Disclosable Pecuniary Interests (DPIs) as defined in Appendix A to this policy.

3.2 DPI offences apply to elected members (Councillors) and voting co-opted members of all Kent and Medway Councils (borough, city, county, district, parish/town and unitary) and also encompass those interests of their spouses or partners living at the same address.

## **4. Purpose**

4.1 The purpose of this policy is to:

- (a) Provide guidance and clarify the role of Monitoring Officers and the Police in the handling of complaints relating to DPIs;
- (b) Provide guidance on the initial investigation and handling by the Police, of alleged criminal offences relating to DPIs;
- (c) Assist Police officers and staff in identifying and correctly categorising alleged DPI offences;
- (d) Avoid prejudicing any prosecution and/or continuing investigation into alleged DPI offences.

4.2 There may be risks of adverse publicity, if the Police fail to investigate alleged DPI offences correctly. The actus reus of such offences may also be indicative of wider corruption and Bribery Act offences which are investigated by the Serious Economic Crime Unit in SCD at Force Headquarters. It is important that supervising staff reviewing complaints, reports and investigation logs of such alleged offences, are aware of the sources of adverse publicity and conduct reviews in accordance with Section 6 of this policy.

## **5. Localism Act 2011 Offences – definition and description**

5.1.1 Section 34 of the Localism Act creates DPI offences (detailed in Appendix B) that are all summary only (brought within a period of 12 months beginning with the date on which evidence sufficient in the opinion of the prosecutor to warrant the proceedings came to the prosecutor's knowledge) and if proven, could result in the disqualification of the person concerned as well as the imposition of a fine.

No proceedings may be brought more than three years after the commission of the offence, or, in the case of a continuous contravention, after the last date on which the offence was committed.

5.1.2 Investigators should note that whilst these are summary only offences, they require the consent of the Director Public Prosecutions to proceed. There is therefore a level of seriousness attached to these offences but, conversely, they do not allow a specific power of search for example under PACE - Sec 8, Sec 18 or Sec 32.

5.1.3 As DPI offences apply to and can only be committed by members (Councillors) and voting co-opted members of the Kent and Medway Councils, police officers should be mindful of the need for impartiality



to political parties and the potential for media impact on the issues surrounding such offences. An example would be a Council's planning committee dealing with a planning application where there is intense local interest in the outcome.

- 5.1.4 Officers should also be mindful of both local and national elections being held around the dates of the DPI complaints and act in accordance with **Purdah Policy C04**.
- 5.1.5 If a pre-election period has commenced and a DPI complaint has been made about a person standing for election, then the complaint shall be recorded and investigated in the normal manner however care should be exercised when approaching any witnesses or suspect about the matter as this could be interpreted as favouring one party or candidate over another. If in doubt contact D/Sgt SECU or Legal Services for advice.
- 5.2 Offences under the Localism Act 2011 should not be prosecuted under that Act where the alleged offence(s) involves more serious and substantial crimes e.g. Misconduct in Public Office, Fraud Act 2006 or Bribery Act 2010. These will be recorded and dealt with in the usual manner and with reference to the relevant force policy and the SECU public corruption team.

## **6. Initial action on receipt of complaint of Localism Act 2011 offence**

Outlined below is the standard operating procedure (SOP) for reporting arrangements as agreed between Kent and Medway Councils' Monitoring Officers and the Kent Police.

See Appendix D - SOP flow chart

It should be noted that these offences are summary only and so these procedures should be followed expeditiously.

### **6.1 Classes of persons reporting to Police**

It is expected that alleged DPI offences will be reported to the Police from one of the following classes of persons, though this list is not exhaustive:-

- Political rival or associate of the named suspect;
- Council employee;
- Council's Monitoring Officer (having first applied the Legal Jurisdiction Test referred to in para.6.1.2 below before referral to the Police);
- Member of the public;
- Members of the press by enquiry to Kent Police Media office;
- Persons who feel aggrieved at a recent decision of the Council or suspect.

Such reports may present as verbal reports, via email or letter to the District Commander for example or by telephone to the FCR. They may also be made by persons approaching officers on patrol or by way of attendance at the front counter. They may also be made anonymously via any of these routes.

#### **6.1.2 Legal jurisdiction criteria test**

If the complaint has been made directly to the Council, it has been agreed that the Monitoring Officer will have ensured that the following legal jurisdiction criteria test has been met prior to referring the complaint to the Police. Conversely, if the complaint has been made directly to the Police, the D/Insp IMU will request that the Monitoring Officer applies this test and gives an opinion prior to further Police involvement:

- (a) Did the alleged conduct after the commencement of section 34 of the Localism Act?
- (b) Was the person complained of a member of the Council at the time of the alleged conduct?

- (c) Was the person complained of acting in an official capacity at the time of the alleged conduct?
- (d) Did the alleged conduct occur when the person complained of was acting as a member of another authority?
- (e) If the facts could be established as a matter of evidence, could the alleged conduct be capable of a breach of the Code of Conduct?
- (f) The complaint is not about dissatisfaction with the Council's decisions, policies and priorities.

In the event that the legal jurisdiction test is passed then a criminal investigation will be commenced by the Police in line with this policy and established police procedures. The suspect will be put on notice when invited by the Investigating Officer to interview under PACE.

In the case that the alleged conduct was committed before the commencement of the Localism Act 2011 or is an expression of dissatisfaction with the Council's decisions or the matter is in relation to a different authority then the complainant should be informed and the matter referred either to the Council's Monitoring officer or to the other authority.

## **6.2 Nature of crime reported.**

Not all members of the public, Councillors or Council employees will recognise a DPI offence and so they will most likely report their complaint as one of the following types:-

- Corruption;
- Fraud by abuse of position of trust;
- Bribery;
- Misconduct in Public Office;
- Breach of Council's code of conduct.

## **6.3 Actions to be taken following reporting of a Localism Act 2011 Offence**

**6.3.1** In all cases, a Storm record should be created that records the details of the allegations as follows:-

- Name and address and contact details of complainant/informant;
- Name and address of suspect – if known;
- Grounds for complaint – i.e. detailing the DPI offence (see Appendix B to this policy) and any supporting information such as dates of meetings etc?

The Storm record should then be tagged with 'IMU' unless the suspect is a Police officer or member of Police staff in which case it will be referred to the Professional Standards Dept.

### **6.3.2 Allocation to and appointment of Investigating Officer**

On recording a DPI complaint as an alleged crime, it should be assessed by the D/Insp IMU (Force SPOC's for this policy) and allocated to a person of the rank of no less than Detective Sergeant based on a different Division to the area where the offence was committed. This is to minimise the risk of the Investigating Officer and the suspect being known to each other in a personal or professional capacity. This should be the Reactive D/Sgt unless the matter is serious or complex in which case, advice from the D/Sgt SECU should be sought. If the suspect is a Police officer or member of Police staff, the investigation will be referred to the Force Professional Standards Department.

Prior to acceptance of the criminal investigation by the Police, the D/Insp IMU will make contact with the relevant Council Monitoring Officer and request that they undertake the Legal Jurisdiction Test. Provided this test criteria is met, the allegation will be recorded as a crime and a Police Investigating Officer will be appointed.

### **6.3.3 Initial Investigative review by Crime Supervisor/Investigating Officer.**

- The Investigating Officer must make early contact with the relevant Council Monitoring Officer outlining the nature of the allegation (this should be done as soon as practicable as there are time limits on the prosecution of these offences). The Council's Monitoring Officer will provide assistance with regard to evidential capture. The Monitoring Officer will also determine who within their Council to notify, this may include the Chief Executive, Leader or Press Officer for example, but will be at their discretion.
- If not already undertaken, the Council's Monitoring Officer will be asked to undertake the Legal Jurisdiction Test (para. 6.1.2 above).

In liaising with the Monitoring Officer, the Investigating Officer should:

- Request that the [Members'] register of interests be checked and minutes of relevant Council meetings be made available or be sign posted to their whereabouts;
- Inquire whether the named suspect has been the subject of similar complaints in the past;
- Inquire whether the named informant has been the subject of similar complaints in the past;
- Ask for any other relevant material or intelligence on the alleged offence, the suspect(s) and witness(es) involved or the circumstances surrounding it;
- Ask for any other information relating to the disclosable pecuniary interest complaint that is held by the Council;
- Ascertain whether it is possible through the circumstances complained of, that the suspect or another party has substantially benefited by the failure to disclose the disclosable pecuniary interest;
- Ascertain if a substantial DPI crime has been committed OR another substantive crime e.g. Bribery Act, misconduct in public office at common law, or fraud by abuse of position of trust

NB – The Localism Act 2011 requires Monitoring Officers to establish and maintain a register of interests of elected members and voting co-opted members. Sensitive interests (whether or not disclosable pecuniary interests) are separately recorded by Monitoring Officers. The 'sensitive register' is similar in definition to the sensitivity of Police information and includes the risk of subjection to personal violence or threat of life. Initial investigators should be mindful of the existence of such sensitive information and, in accordance with established principles; they should not record such interests on any CAD storm report or crime report log.

### **6.3.4 Circumstances that may indicate wider or more substantial criminal activity**

The circumstances of the complaint may also be indicative of a wider, more substantive criminal act which will need referring to SECU at FHQ.

Where the reviewing officer believes that the following factors may be present, then the matter should be reported to SECU or PSD as appropriate:-

- The suspect has potentially made substantive gains from the failure to disclose the interest. e.g. suspect has voted on building works to be instigated when their family member runs a local building firm and that firm has gained from the award of the contract;
- The suspect has been the subject of similar complaints to either the Police or Council in the past from different complainants;
- There are substantial complicating factors that require detailed investigation. Possible examples are as follows:-
  - e.g. 1) The whistle-blower in the Council who has reported the complaint is now being subjected to pressure from the suspect in terms of employment or capability to continue in their role;
  - e.g. 2) There are corporations or limited companies involved with commercial interests AND the suspect or their family members or their associates are involved in these companies;
  - e.g. 3) Investigation of the alleged offences requires production orders or search warrants to review special procedure material as defined under Schedule 1 PACE (this includes business records held in confidence);

- There is a political element to either the nature, the substance of the complaint, the suspect or the informant that relates to an important public interest or local issue being promoted by one or more registered political parties;
- The complaint is made around an issue that is relevant to a local election and or the complaint is in a pre-election period or just after an election (refer to Police Policy C04).
- The circumstances of the allegation constitute a substantial crime of:-
  - Bribery as defined in the Bribery Act 2010;
  - Misconduct in public office at common law;
  - Fraud by abuse of position of trust contrary to the Fraud Act 2006.
- The reviewing officer believes that the surrounding circumstances require NIM Level 2 investigation. Examples include, but are not limited to:-
  - Risk of a 'Critical Incident';
  - Cross border criminality with a national or international context;
  - The complainant or the suspect are serving Police officers or civilian staff or are family members, or otherwise related to, serving Police officers or civilian staff;
  - There exists substantial and relevant sensitive information relating to the offence;
  - There is a serious risk of prejudice to an important public interest;
  - The reviewing officer believes that the alleged offence and the circumstances surrounding it are not suitable for investigation by Police officers in a different district or area.

It should be noted that referral of the complaint to the Serious Crime Directorate should only be made where there are substantial grounds for doing so. The essence of the Localism Act is to ensure greater transparency and public accountability and these principles should be mirrored in the Police investigation.

## **7. Conflict of Interest**

- 7.1 Any Officer or member of Police staff who investigates DPI allegations should be mindful of the conflict of interest principles and apply them to their own personal circumstances in relation to the alleged offence being investigated.
- 7.2 There are real and substantial risks of adverse publicity if the Investigating Officer, statement taker or reviewing officer does not themselves declare any interest associated with the investigation of the alleged offence. Any Officer or member of Police staff who considers that they or another may have a conflict of interest in relation to such an allegation or investigation must seek advice on this matter from the Professional Standards Dept or Legal Services, as a matter of urgency.
- 7.3 Wider advice and support in relation to the investigation can always be sought from D/Insp IMU, SECU or Legal Services.

## **8. Internal Notifications**

- 8.1 The Investigating Officer will expeditiously notify the DPI complaint to the relevant District Commander or in their absence, the Divisional Commander (or Deputy). If the matter is out of hours then the Duty Superintendent will be notified if appropriate to the circumstances. Any of these individuals will then consider whether the matter should be brought to the attention of the Force Gold Commander. The Investigating Officer will also notify the Divisional/Force media officer.

## **9. Crime Recording**

- 9.1 The following actions will be taken in accordance with National Crime Recording Standards [Home Office counting rules]:-
- Offences under s.34 Localism Act are not notifiable i.e. a crime report is not required for [Home Office] National Crime Recording Standards purposes;
  - Where an investigating officer identifies a more serious notifiable offence (e.g. Pecuniary Advantage) a crime report for this crime will be created in consultation with the D/Sgt SECU / SCD. [note: fraud offences will be recorded by Action Fraud];

- Where a more substantive crime is alleged/recognised. (e.g. fraud by abuse of position of trust) then a crime report for this crime will be generated, and DS SECU/SCD notified prior to allocation;
- Where an alleged DPI offence is deemed sensitive or has NIM level 2/3 factors, a D/Sgt in SECU/SCD must be notified.

## **10. Initial Investigative Actions for Localism Act 2011 Offences**

On allocation, the Investigating Officer should consider performing the following investigative actions. These actions should be reviewed on a case by case basis and made proportionately to the circumstances of the alleged offence being investigated.

10.1 Material to be requested of the Monitoring Officer

10.2 The Investigating Officer will seek the views of the Monitoring Officer.

10.3 These views should be in writing and (subject to any rules on legal professional privilege) contain answers to the questions in 10.2.4, which are disclosable under the Criminal Procedures and Investigations Act 1996 (CPIA).

10.4 The Monitoring Officer is a potential witness in the case and he/she should be aware that subsequent to providing this information, they may be required to provide a witness statement and attend court as a witness.

10.5

- a) What circumstances were reported to the Monitoring Officer regarding this alleged offence?
- b) What complaints have been received against the named suspect to this alleged offence historically and from whom?
- c) If not reported to the Police, what was the basis of this decision? Where is this decision and rationale recorded?
- d) What explanation was given in any previous complaint against the suspect by either the suspect themselves or any other person?
- e) What other complaints have been received from or against the complainant in this case and how were these dealt with?
- f) What has the suspect said either in explanation or mitigation or remorse about the alleged offence to any other person and where is this recorded and who witnessed this relevant comment?
- g) Where not available via other means e.g. on Unitary/Parish/District Council website, request that the Police are provided with copies of the following:-
- h) Request that a search be made of the following communications or records and formally request that steps are taken to preserve them for possible review by the Police:-
  - i. Any emails, messages, letters or other correspondence received by the Council in relation to the matter under investigation. Both prior to, during and after the relevant period of the offence;
  - ii. Any emails, messages or communications or other correspondence received or sent by the suspect during the relevant period of the offence;
  - iii. Any emails, messages or communications or other correspondence received or sent by the complainant during the relevant period of the offence.

## **11. Material to be sought with respect to the Disclosable Pecuniary Interest**

11.1 The Investigating Officer should ensure that suitable checks are made to establish that the alleged disclosable pecuniary interest of the suspect has been in existence and known by the suspect. The actual checks made are different in each circumstance and the following is a guide only:

- i. Companies House including filed reports, current and historic directors and shareholders, previous company names, names and addresses of company office holders, accountants and tax advisers (if so recorded);
- ii. HMRC checks for declared earnings under PAYE VAT return for the relevant period;
- iii. Public, open source (e.g. Google) checks and local media websites and 'blogs';
- iv. Police data and intelligence sources Including PNC, PND etc;
- v. Council's Electoral Register (voters) checks on appropriate addresses and persons;
- vi. Council tax records for occupancy held on appropriate addresses and persons;
- vii. Checks via [Police] area Financial Investigator on the subject and the disclosable interest under investigation via Kent Police form 3238;
- viii. Information from the Council's Monitoring Officer;
- ix. Any other check that the Investigating Officer believes is relevant to the investigation.

## **12. Powers to obtain evidence and proportionality**

- 12.1 It should be noted that DPI offences under the Localism Act 2011 are summary only offences and therefore, the power to obtain warrants under Sec 8 of Police and Criminal Evidence Act is not available to Police officers.
- 12.2 The Investigating Officer should also be mindful of proportionality in the investigation and the need to resolve these alleged DPI offences expeditiously.

## **13. Suspect Interviews**

- 13.1 These should be conducted with a view to the circumstances of the investigation and fully comply with current codes of practice.
- 13.2 The Investigating Officer should bear in mind that a lot of investigative work can be avoided by an early account from the suspect of these alleged offences and in early liaison with the Council's Monitoring Officer, that the relevant circumstances that gave rise to the complaint, are actually correctly reported.
- 13.3 Investigators should also be mindful of the case of *Richardson v Chief Constable West Midlands Police* and the provisions of PACE code G for the necessity of arrest.

## **14. Disposal**

- 14.1 Once the outcome of an investigation is known, early notification must be made to the IMU and also to the relevant Monitoring Officer and complainant. With the consent of the complainant, evidence obtained by Kent Police during the course of an investigation, should be shared with the Monitoring Officer under the Kent and Medway Information Sharing Agreement.
- 14.2 Where the investigation reveals prima facie evidence of a DPI offence having been committed, then this should be pursued and investigated and the case file submitted to CPS for consideration under the Code for Crown Prosecutors (realistic possibility of conviction and in the public interest to prosecute).
- 14.3 If the matter proceeds to prosecution, the Monitoring Officer and the complainant will be notified accordingly. No further action will be taken by the Monitoring Officer. The results of the prosecution will be notified to the Monitoring Officer and the complainant.
- 14.4 If the matter does not proceed to prosecution, the Monitoring Officer and complainant will be notified accordingly. The Monitoring Officer may, on the basis of the Investigating Officer's report, consider what, if any action, to take under the Council's [Member] code of conduct and arrangements.
- 14.5 It must be borne in mind by supervisors that the disposal of a DPI complaint may attract adverse publicity and potentially call into question the reputation of the Force or wider Police service in particular, were a more substantive crime to be overlooked.
- 14.6 Closure of the investigation should be reviewed by an officer of at least the rank of Inspector.

- 14.7 Upon closure of the investigation, the reviewing officer must ensure that the decisions made during the course of the investigation are recorded and justified in accordance with the National Decision Making Model.
- 14.8 Any internal notifications carried out under section 8 above will also be replicated upon closure of the investigation.

## **15. Freedom of Information requests**

- 15.1 The Freedom of Information Act (FOI) imposes a duty on public bodies to 'confirm or deny' whether information is held and to communicate the information if it is held (s.1(1)). Where information falls within one of the exemptions, public bodies are not obliged to comply with that duty, however, they may choose to do so in the interests of transparency.
- 15.2 Information held by a public authority for the purpose of investigations is exempt under s.30. Such information held at any time for such purposes is exempt although the public interest in maintaining the exemption must outweigh that in disclosure.
- 15.3 Information which is not exempt under s.30 but relates to law enforcement is covered by the exemption at s.31. Section 31 is prejudice based which means to be engaged, the prejudice to the specified purpose(s) by disclosure must be demonstrated. Again, there is a requirement to conduct a public interest test.
- 15.4 Any information relating to an investigation under this policy need not be disclosed however the Reviewing officer should consider appropriate releases of information and conduct a public interest review with regard to all the circumstances of each case.
- 15.5 No data should be released that would prejudice any persons right to a fair trial at court. Officers should seek the advice of relevant departments (FOI, media, Legal Services etc.)

## The seven principles of public life

### Principle

<i>Preamble</i>	<p>The principles of public life apply to anyone who works as a public office-holder. This includes all those who are elected or appointed to public office, nationally and locally, and all people appointed to work in the civil service, local government, the police, courts and probation services, NDPBs, and in the health, education, social and care services.</p> <p>All public office-holders are both servants of the public and stewards of public resources. The principles also have application to all those in other sectors delivering public services.</p>
<i>Selflessness</i>	<p>Holders of public office should act solely in terms of the public interest.</p>
<i>Integrity</i>	<p>Holders of public office must avoid placing themselves under any obligation to people or organisations that might try inappropriately to influence them in their work. They should not act or take decisions in order to gain financial or other material benefits for themselves, their family, or their friends. They must declare and resolve any interests and relationships.</p>
<i>Objectivity</i>	<p>Holders of public office must act and take decisions impartially, fairly and on merit, using the best evidence and without discrimination or bias.</p>
<i>Accountability</i>	<p>Holders of public office are accountable to the public for their decisions and actions and must submit themselves to the scrutiny necessary to ensure this.</p>
<i>Openness</i>	<p>Holders of public office should act and take decisions in an open and transparent manner.</p> <p>Information should not be withheld from the public unless there are clear and lawful reasons for so doing.</p>
<i>Honesty</i>	<p>Holders of public office should be truthful.</p>
<i>Leadership</i>	<p>Holders of public office should exhibit these principles in their own behaviour. They should actively promote and robustly support the principles and be willing to challenge poor behaviour wherever it occurs.</p>



### List of offences with descriptions

Section 34 of the Localism Act 2011 creates a number of disclosable pecuniary interest related offences. Kent and Medway Councils have adopted codes of conduct (applicable to elected members (Councillors) and voting co-opted members). The 'Nolan Principles of Selflessness, Integrity, Objectivity, Accountability, Openness, Honesty and Leadership at Appendix B to this policy, form the basis of the codes of conduct and are indicative of certain tests to be applied when Monitoring Officers consider whether the codes have been breached.

If, without reasonable excuse, a Member:

**Sections 30(1)** – Fails to notify the Monitoring Officer before the end of 28 days beginning with the day on which he/she becomes an elected member or voting co-opted member, of any disclosable pecuniary interest which he/she has at the time when the notification is given.

**Section 31(2)** - Fails to disclose the disclosable pecuniary interest at Council meetings where the interest is not entered in the Council's register of [Members'] interests.

**Section 31(3)** - Fails to notify the Monitoring Officer of a disclosable pecuniary before the end of 28 days beginning with the date of disclosure at a Council meeting, if the interest is not entered in the Council's register of [Members'] interests and is not the subject of a pending notification.

**Section 31(4)** - Takes part in the discussion or votes, or further discussions or votes, at a Council meeting on matters (which are being considered at the meeting) in which he/she has a disclosable pecuniary interest.

**Section 31(7)** - Fails to notify the Monitoring Officer of a disclosable pecuniary interest before the end of 28 days beginning with the date when he/she becomes aware that he/she has such an interest in a matter to be dealt with, or being dealt with, by him/her acting alone in the course of discharging a Council function.

**Section 31(8)** - Takes any steps or any further steps in relation to a matter being dealt with by him/her acting alone in the course of discharging a Council function, except a step for the purpose of enabling the matter to be dealt with otherwise than by him/her.

**False or misleading information** - Knowingly or recklessly provides false or misleading information in any of the disclosures or notifications under Sections 30(1), 31(2), 31(3) or 31(7).

## Appendix C

### Disclosable Pecuniary Interests, as prescribed by regulations, are as follows:

The descriptions on Disclosable Pecuniary Interests are subject to the following definitions:

**"the Act"** means the Localism Act 2011

**"body in which the relevant person has a beneficial interest"** means a firm in which the relevant person is a partner or a body corporate of which the relevant person is a director, or in the securities of which the relevant person has a beneficial interest

**"director"** includes a member of the committee of management of an industrial and provident society

**"land"** excludes an easement, servitude, interest or right in or over land which does not carry with it a right for the relevant person (alone or jointly with another) to occupy the land or to receive income

**"M"** means a member of the relevant authority

**"member"** includes a co-opted member

**"relevant authority"** means the authority of which M is a member

**"relevant period"** means the period of 12 months ending with the day on which M gives a notification for the purposes of section 30(1), or section 31(7), as the case may be, of the Act

**"relevant person"** means M or any other person referred to in section 30(3)(b) of the Act (the Member's spouse, civil partner, or somebody with whom they are living as a husband or wife, or as if they were civil partners)

**"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

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

relevant authority; and

(b) either

(i) the total nominal value of the securities exceeds £25,000 or one hundredth of the total issued share capital of that body; or

(ii) if the share capital of that body is of more than one class, the total nominal value of the shares of any one class in which the relevant person has a beneficial interest exceeds one hundredth of the total issued share capital of that class.

STANDARD OPERATING PROCEDURE (SOP)

**LOCALISM ACT 2011 Offences**  
**S.34 Pecuniary Interest Disclosure**

