

# **FOLKESTONE AND HYTHE DISTRICT COUNCIL** **CONSTITUTION**

## **PART 9 – COUNCILLORS**

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## **PART 9 – COUNCILLORS**

### **PART 9.1 – LOCAL CODE OF CONDUCT FOR COUNCILLORS**

#### **1. PREAMBLE**

- 1.1** The Code of Conduct that follows is adopted under section 27(2) of the Localism Act 2011.
- 1.2** The Code is based on the Seven Principles of Public Life under section 28(1) of the Localism Act 2011, which are set out in Annex 1.
- 1.3** This Preamble and Annex 1 do not form part of the Code, but you should have regard to them, as they will help you to comply with the Code.
- 1.4** If you need guidance on any matter under the Code, you should seek it from the Monitoring Officer or your own legal adviser – but it is entirely your responsibility to comply with the provisions of this Code.
- 1.5** In accordance with Section 34 of the Localism Act 2011, it is a criminal offence if, without reasonable excuse, you:
- a) Fail to notify the Monitoring Officer of a Disclosable Pecuniary Interest before the end of 28 days of becoming, or being re-elected or re-appointed, a Member or Co-opted Member of the Authority;
  - b) Fail to notify the Monitoring Officer of a Disclosable Pecuniary Interest before the end of 28 days of becoming aware of it, where you are acting alone in the course of discharging a function of the Authority (including making a decision in relation to the matter) and the interest is not already registered, or is not the subject of a pending notification to the Monitoring Officer;
  - c) Fail to disclose a Disclosable Pecuniary Interest at a meeting, where such interest has not already been registered or notified to the Monitoring Officer;
  - d) Fail to notify the Monitoring Officer of a Disclosable Pecuniary Interest before the end of 28 days of disclosing it, at a meeting, where such interest has not already been registered or notified to the Monitoring Officer;
  - e) Take part in discussions or votes at meetings that relate to the Disclosable Pecuniary Interest, unless a dispensation has been granted;
  - f) Knowingly or recklessly provide false or misleading information in any of the above disclosures or notifications.
- 1.6** Any written allegation, received by the Authority, that you have failed to comply with the Code, will be dealt with under the arrangements adopted by the Authority for such purposes. If it is found that you have failed to comply

with the Code, the Authority may have regard to this failure in deciding whether to take action and, if so, what action to take in relation to you.

## THE CODE

### 1. INTERPRETATION

#### In this Code:

#### 1.1 'Associated Person' means (either in the singular or in the plural):

- a) A family member or any other person, or body, with whom you have a close association, including your spouse, civil partner, or somebody with whom you are living as a husband or wife, or as if you are civil partners; or
- b) Any person or body who employs or has appointed you or such persons, any firm in which you or they are a partner, or any company of which you or they are directors; or
- c) Any person or body in whom you or such persons have a beneficial interest in a class of securities exceeding the nominal value of £25,000; or
- d) Any body of which you are in a position of general control or management and to which you are appointed or nominated by the Authority; or
- e) Any body in respect of which you are in a position of general control or management:
  - i. exercising functions of a public nature; or
  - ii. directed to charitable purposes; or
  - iii. one of whose principal purposes includes the influence of public opinion or policy (including any political party or trade union).

#### 1.2 'Authority' means the District Council of Folkestone and Hythe.

#### 1.3 'Authority Function' means any one or more of the following interests that relate to the functions of the Authority:

- a) Housing – where you are a tenant of the Authority, provided that those functions do not relate particularly to your tenancy or lease; or
- b) School meals, or school transport and travelling expenses – where you are a parent or guardian of a child in full time education, or are a parent governor of a school, unless it relates particularly to the school which your child attends;

- c) Statutory sick pay under Part XI of the Social Security Contributions and Benefits Act 1992 – where you are in receipt of, or are entitled to the receipt of, such pay;
- d) An allowance, payment or indemnity given to members of the Authority;
- e) Any ceremonial honour given to members of the Authority;
- f) Setting council tax or a precept under the Local Government Finance Act 1992.

**1.4** ‘**Code**’ means this Code of Conduct.

**1.5** ‘**Co-opted Member**’ means a person who is not an elected member of the Authority but who is a member of:

- a) Any committee or sub-committee of the authority; or
- b) Represents the Authority on any joint committee, or joint sub-committee, of the Authority; and
- c) Who is entitled to vote on any question that falls to be decided at any meeting.

**1.6** ‘**Disclosable Pecuniary Interest**’ means those interests of a description specified in regulations made by the Secretary of State (as amended from time to time), as set out in Annex 2, and where either it is:

- a) Your interest; or
- b) An interest of your spouse or civil partner, a person with whom you are living as husband and wife, or a person with whom you are living as if you were civil partners, and provided you are aware that the other person has the interest.

**1.7** ‘**Interests**’ means Disclosable Pecuniary Interests and Other Significant Interests.

**1.8** ‘**Meeting**’ means any meeting of:

- a) The Authority;
- b) The executive of the Authority;
- c) Any of the Authority’s or its executive’s committees, sub-committees, joint committees and/or joint sub-committees.

**1.9** ‘**Member**’ means a person who is a member of the Authority and includes a Co-opted Member.

**1.10** **‘Other Significant Interest’** means an interest (other than a Disclosable Pecuniary Interest or an interest in an Authority Function) in any business of the authority which:

- a) Affects the financial position of yourself and/or an Associated Person to a greater extent than the majority of:-
  - i. other council tax payers, ratepayers or inhabitants of the electoral division or ward, as the case may be, affected by the decision; or
  - ii. (in other cases) other council tax payers, ratepayers or inhabitants of the Authority’s area; or
- b) Relates to the determination of your application for any approval, consent, licence, permission or registration made by, or on your behalf of, you and/or an Associated Person;

and which, in either case, a member of the public with knowledge of the relevant facts would reasonably regard as being so significant that it is likely to prejudice your judgment of the public interest.

**1.11** **‘Register of Members’ Interests’** means the Authority’s register of Disclosable Pecuniary Interests established and maintained by the Monitoring Officer under section 29 of the Localism Act 2011.

**1.12** **‘Sensitive Interest’** means information, the details of which, if disclosed, could lead to you or a person connected with you being subject to violence or intimidation.

## **2. SCOPE**

A member must comply with this Code whenever he/she acts in their capacity as a Member or Co-opted Member of the Authority.

## **3. GENERAL OBLIGATIONS**

**3.1** A member must, when using or authorising the use by others of the resources of the Authority:

- a) Act in accordance with the Authority’s reasonable requirements; and
- b) Ensure that such resources are not used improperly for political purposes (including party political purposes).

**3.2** A member must not:

- a) Bully any person;
- b) Intimidate or attempt to intimidate any person who is or is likely to be a complainant, a witness, or involved in the administration of any

investigation or proceedings, in relation to an allegation that a Member has failed to comply with this Code;

- c) Do anything that compromises, or is likely to compromise, the impartiality or integrity of those who work for, or on behalf of, the Authority;
- d) Disclose information given to the member in confidence by anyone, or information acquired by the member which he/she believes, or ought reasonably to be aware, is of a confidential nature, except where:
  - i. he/she has the written consent of a person authorised to give it; or
  - ii. he/she is required by law to do so; or
  - iii. the disclosure is made to a third party for the purpose of obtaining professional advice provided that the third party agrees not to disclose the information to any other person; or
  - iv. the disclosure is:
    - reasonable and in the public interest; and
    - made in good faith and in compliance with the reasonable requirements of the Authority;
- e) Prevent another person from gaining access to information to which that person is entitled by law;
- f) Conduct him/herself in a manner which could reasonably be regarded as bringing his/her office or the Authority into disrepute;
- g) Use or attempt to use his/her position as a Member improperly to confer on or secure for themselves or any other person, an advantage or disadvantage.

#### **4. REGISTERING DISCLOSABLE PECUNIARY INTERESTS**

**4.1** A member must, before the end of 28 days beginning with the day he/she becomes a Member or Co-opted Member of the Authority, or before the end of 28 days beginning with the day on which this Code takes effect (whichever is the later), notify the Monitoring Officer of any Disclosable Pecuniary Interest.

**4.2** In addition, a Member must, before the end of 28 days beginning with the day that he/she becomes aware of any new Disclosable Pecuniary Interest or change to any interest already registered, register details of that new interest or change, by providing written notification to the Monitoring Officer.

**4.3** Where the Member has a Disclosable Pecuniary Interest in any matter to be dealt with, or being dealt with, by him/her acting alone in the course of discharging a function of the Authority (including making a decision in relation to the matter), then if the interest is not registered in the Register of Members' Interests and is not the subject of a pending notification, he/she must notify the Monitoring Officer before the end of 28 days beginning with the day he/she becomes aware of the existence of the interest.

## **5. DECLARING INTERESTS**

**5.1** Whether or not a Disclosable Pecuniary Interest has been entered onto the Register of Members' Interests or is the subject of a pending notification, the member must comply with the disclosure procedures set out below.

**5.2** Where the member is present at a meeting and has a Disclosable Pecuniary Interest or Other Significant Interest (and he/she is aware that they have such an interest) in any matter to be considered, or being considered, at the meeting, the member must:

- a) Disclose the Interest; and
- b) Explain the nature of that interest at the commencement of that consideration or when the interest becomes apparent (subject to paragraph 6, below); and unless you have been granted a dispensation:
- c) Not participate in any discussion of, or vote taken on, the matter at the Meeting; and
- d) Not seek improperly to influence a decision about that business; and
- e) Withdraw from the meeting room in accordance with the Authority's procedure rules whenever it becomes apparent that the business is being considered.

**5.3** Where a member has an Other Significant Interest in any business of the Authority, he/she may:

- a) In accordance with the Authority's procedure rules attend and observe the meeting from the place reserved in the meeting room for the public but he/she may not participate in any discussions of, or vote taken on, the matter at the meeting (subject to the provisions of sub-paragraph b) below;
- b) Make representations, answer questions or give evidence relating to the business, provided that the public are also allowed to attend the meeting for the same purposes. Having made his/her representations, given evidence or answered questions he/she must:
  - i. not participate in any discussions of, or vote taken on, the matter at the meeting; and

- ii. withdraw to the place in the meeting room reserved for the public in accordance with the Authority's procedure rules.

**5.4** Where a member has a Disclosable Pecuniary Interest or Other Significant Interest in any business of the Authority where he/she is acting alone in the course of discharging a function of the Authority (including making an executive decision), the member must:

- a) Notify the Monitoring Officer of the interest and its nature as soon as it becomes apparent; and
- b) Not take any steps, or any further steps, in relation to the matter except for the purpose of enabling the matter to be dealt with otherwise than by you; and
- c) Not seek improperly to influence a decision about the matter.

## **6. SENSITIVE INTERESTS**

**6.1** Where the member considers that the information relating to any of his/her Disclosable Pecuniary Interests is a Sensitive Interest, and the Monitoring Officer agrees, the Monitoring Officer will not include details of the Sensitive Interest on any copies of the Register of Members' Interests which are made available for inspection or any published version of the Register, but may include a statement that you have an interest, the details of which are withheld under this paragraph.

**6.2** The member must, before the end of 28 days beginning with the day you become aware of any change of circumstances which means that information excluded under paragraph 6(1) is no longer a Sensitive Interest, notify the Monitoring Officer asking that the information be included in the Register of Members' Interests.

**6.3** The rules relating to disclosure of Interests in paragraphs 5(2) and (3) will apply, save that the member will not be required to disclose the nature of the Sensitive Interest, but merely the fact that they hold an interest in the matter under discussion.

## **7. GIFTS AND HOSPITALITY**

**7.1** The member must, before the end of 28 days beginning with the day of receipt/acceptance, notify the Monitoring Officer of any gift, benefit or hospitality with an estimated value of £100 or more, or a series of gifts, benefits and hospitality from the same or an associated source, with an estimated cumulative value of £100 or more, which are received and accepted by him/her (in any one calendar year) in the conduct of the business of the Authority, the business of the office to which he/she has been elected or appointed or when he/she are acting as representative of the Authority. The member must also register the source of the gift, benefit or hospitality.

**7.2** Where any gift, benefit or hospitality the member has received or accepted relates to any matter to be considered, or being considered at a Meeting, he/she must disclose at the commencement of the Meeting or when the interest becomes apparent, the existence and nature of the gift, benefit or hospitality, the person or body who gave it to him/her and how the business under consideration relates to that person or body. The member may participate in the discussion of the matter and in any vote taken on the matter, unless he/she has an Other Significant Interest, in which case the procedure in paragraph 5 above will apply.

**7.3** The member must continue to disclose the existence and nature of the gift, benefit or hospitality at a relevant Meeting, for 3 years from the date he/she first registered the gift, benefit or hospitality.

**7.4** The duty to notify the Monitoring Officer does not apply where the gift, benefit or hospitality comes within any description approved by the Authority for this purpose.

## **8. DISPENSATIONS**

**8.1** The Audit and Governance Committee may, on a written request made to the Monitoring Officer (as appointed Proper Officer for the receipt of applications for dispensation) by a member with an Interest, grant a dispensation relieving the member from either or both of the restrictions on participating in discussions and in voting (referred to in paragraph 5 above).

**8.2** A dispensation may be granted only if, after having had regard to all relevant circumstances, the Audit and Governance Committee, considers that:

- a) without the dispensation the number of persons prohibited from participating in any particular business would be so great a proportion of the body transacting the business as to impede the transaction of the business; or
- b) without the dispensation, the representation of different political groups on the body transacting any particular business would be so upset as to alter the likely outcome of any vote relating to the business; or
- c) granting the dispensation is in the interests of persons living in the authority's area; or
- d) without the dispensation each member of the Authority's executive would be prohibited from participating in any particular business to be transacted by the Authority's executive; or
- e) it is otherwise appropriate to grant a dispensation.

**8.3** The Monitoring Officer may also grant dispensations to members, to speak only, or to speak and vote where:

- a) so many members of the decision-making body have Disclosable Pecuniary or Other significant Interests in a matter that it would impede the transaction of the business; or
- b) without a dispensation, no member of the executive would be able to participate on a particular item of business;

**8.4** The Monitoring Officer may, in consultation with the Chairman (or in his/her absence the Vice-Chair) of the Audit and Governance Committee, grant dispensations to speak and/or vote, where it is not possible to convene a meeting of that committee and where the application for dispensation is made on any of the following grounds:

- a) Without the dispensation, the representation of different political groups on the body transacting the business would be so upset as to alter the outcome of any vote on the matter;
- b) That the Authority considers that the dispensation is in the interests of persons living in its area; or
- c) Where the Authority considers that it is otherwise appropriate to grant a dispensation.

**8.5** In making the decision, the Monitoring Officer shall have regard to the following criteria:

- a) The nature of the member's interest and whether allowing them to participate would damage public confidence in the conduct of the authority's business.

If public confidence would be damaged then such an application would be likely to be refused. It is unlikely that it would be appropriate, therefore, to grant a dispensation to a member who has an interest arising as a result of an effect on their personal financial position or on that of a relative.

- b) The interest is common to the member and a significant proportion of the general public.
- c) The participation of the member, in the business that the interest relates to, is justified by the member's particular role or expertise.
- d) The business that the interest relates to is about a voluntary organisation or a public body which is to be considered by an overview and scrutiny committee, and the member's interest is not a financial one.

**8.6** In circumstances such as these, the committee might believe that it is in the interests of the authority's inhabitants to remove the incapacity from speaking or voting.

- 8.7** Any dispensations granted shall be reported back to the next meeting of the Audit and Governance Committee.
- 8.8** A dispensation must specify the period for which it has effect, and the period specified may not exceed four years.
- 8.9** Paragraph 5, above, does not apply in relation to anything done for the purpose of deciding whether to grant a dispensation under this paragraph.

## **ANNEX 1 – THE SEVEN PRINCIPLES OF PUBLIC LIFE**

In accordance with the Localism Act 2011, and in order to help maintain public confidence in this Authority, members are committed to behaving in a manner that is consistent with the following principles. However, it should be noted that these Principles do not create statutory obligations for Members and do not form part of the Code. It follows from this that the Authority cannot accept allegations that they have been breached.

**SELFLESSNESS:** Members should act solely in terms of the public interest and never improperly confer an advantage or disadvantage on any person or act to gain financial or other material benefits for themselves, their family, a friend or close associate.

**INTEGRITY:** Members should exercise independent judgment and not compromise their position by placing themselves under obligations to outside individuals or organisations who might seek to influence him/her in the performance of their official duties. Members should behave in accordance with all legal obligations, alongside any requirements contained within this Authority's policies, protocols and procedures, including on the use of the Authority's resources. Members should value their colleagues and staff and engage with them in an appropriate manner and one that underpins the mutual respect that is essential to good local government. Members should treat people with respect, including the organisations and public they engage with and those they work alongside.

**OBJECTIVITY:** In carrying out public business, including making public appointments, awarding contracts, or recommending individuals for rewards and benefits, members should make choices on merit. Members should deal with representations or enquiries from residents, members of the communities and visitors fairly, appropriately and impartially. Members should champion the needs of the whole community and especially their constituents, including those who did not vote for them.

**ACCOUNTABILITY:** Members are accountable to the public for their decisions and actions and should fully co-operate with whatever scrutiny is appropriate to their office.

**OPENNESS:** Members should be as open and as transparent as possible about all the decisions and actions that they take to enable residents to understand the reasoning behind those decisions and to be informed when holding them and other Members to account. Members should give reasons for their decisions and restrict information only when the wider public interest or the law clearly demands it. Members should listen to the interests of all parties, including relevant advice from statutory and other professional officers, taking all relevant information into consideration, remaining objective and making decisions on merit.

**HONESTY:** Members have a duty to declare interests relating to their public duties and to take steps to resolve any conflicts arising in a way that protects the public interest. Members should not allow other pressures, including the financial interests of themselves or others connected to them, to deter them from pursuing constituents'

casework, the interests of the Authority's area or the good governance of the Authority in a proper manner.

**LEADERSHIP:** Through leadership and example members should promote and support high standards of conduct when serving in their public post. Members should provide leadership through behaving in accordance with these principles when championing the interests of the community with other organisations as well as within this Authority.

**ANNEX 2 – 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 the person M referred to in section 30 of the Act

**‘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

<b>Interest</b>	<b>Description</b>
Employment, office, trade, profession or vocation	Any employment, office, trade, profession or vocation carried on for profit or gain.
Sponsorship	Any payment or provision of any other financial benefit (other than from the 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.

## **PART 9.2 - ARRANGEMENTS FOR DEALING WITH CODE OF CONDUCT COMPLAINTS UNDER THE LOCALISM ACT 2011**

### **1. CONTEXT**

These arrangements are made under section 28 of the Localism Act 2011. They set out the process that the District Council has adopted for dealing with complaints that an elected or co-opted member or parish/town councillor has failed to comply with the Code of Conduct.

### **2. INTERPRETATION**

- 2.1** ‘**District Council**’ means the District Council of Folkestone and Hythe.
- 2.2** ‘**Code of Conduct**’ means the Code of Conduct, which the District (and Parish Council) has adopted under section 27(2) of the Localism Act 2011.
- 2.3** ‘**Complainant**’ means a person who has submitted a complaint, in accordance with these Arrangements, alleging that a Subject Member has breached the Code of Conduct.
- 2.4** ‘**Disclosable Pecuniary Interest**’ means those disclosable pecuniary interests that meet the definition prescribed by regulations (as amended from time to time), as set out in Annex 2 to the Code of Conduct.
- 2.5** ‘**Independent Person**’ means a person, or persons, appointed by the District Council under section 28(7) of the Localism Act 2011:
- a) Whose views must be sought and taken into account by the District Council before a decision is made on any complaint alleging a breach of the Code of Conduct by a Subject Member;
  - b) Who may be consulted by the Subject Member about the complaint.
- 2.6** ‘**Investigating Officer**’ means the person appointed by the Monitoring Officer to undertake a formal investigation of a complaint alleging a breach of the Code of Conduct by a Subject Member. The Investigating Officer may be another senior officer of the District Council, an officer of another authority or an external investigator.
- 2.7** ‘**Monitoring Officer**’ is a senior officer of the District Council who has statutory responsibility for maintaining the Register of Members’ Interests and who is responsible for administering the arrangements for dealing with any complaint alleging a breach of the Code of Conduct by a Subject Member. It includes any other officer of the District Council nominated by the Monitoring Officer to act on their behalf.
- 2.8** ‘**Parish Council**’ means the relevant parish/town council within the District of Folkestone and Hythe.

**2.9** 'Parties' means the Complainant, Subject Member and the Investigating Officer, as appropriate.

**2.10** 'Subject Member' means an elected member or co-opted member of the District [or Parish Council], against whom a complaint has been made alleging a breach of the Code of Conduct.

### **3. APPOINTMENT OF INDEPENDENT PERSON**

**3.1** The District Council shall appoint the Independent Person (and any substitute), in accordance with the requirements of section 27 of the Localism Act 2011, upon such terms as to remuneration and expenses as may be determined by the District Council from time to time.

**3.2** The Independent Person (and any substitute) shall be treated as if they were a member of the District Council for the purposes of the District Council's arrangements for indemnifying and insuring its Members.

### **4. MAKING A COMPLAINT**

**4.1** A complaint alleging a breach of the Code of Conduct by a Subject Member must be made in writing and addressed to the Monitoring Officer using the complaint form at the end of Annex 1 to these Arrangements. Complainants who find difficulty in making their complaint in writing (e.g. because of a disability), will be offered assistance.

**4.2** The Subject Member will normally be informed of the identity of the Complainant and details of the complaint made against them, but the Complainant's identity and/or details of their complaint may be withheld, at the Complainant's request, if it appears to the Monitoring Officer that there are sound reasons for granting such a request (refer to paragraph 5 of Annex 1 to these Arrangements).

**4.3** The Monitoring Officer will normally acknowledge receipt of a complaint within 5 working days of receiving it. At the same time (and subject to para. 4.2 above), the Monitoring Officer will send a copy of the complaint to the Subject Member in accordance with paragraph 2 of Annex 1 to these Arrangements.

### **5. CRIMINAL CONDUCT**

**5.1** In accordance with section 34 of the Localism Act 2011, it is a criminal offence if, without reasonable excuse, a member:

- a) Fails to notify the Monitoring Officer of a Disclosable Pecuniary Interest within 28 days beginning with the day you become, or are re-elected or re-appointed, a Member or Co-opted Member of the Authority;
- b) Fails to notify the Monitoring Officer of a Disclosable Pecuniary Interest within 28 days beginning with the day you become aware of it, where you are acting alone in the course of discharging a function of the Authority (including making a decision in relation to the matter) and the

interest is not already registered or is not the subject of a pending notification to the Monitoring Officer;

- c) Fails to disclose a Disclosable Pecuniary Interest at a meeting, where such interest has not already been registered or notified to the Monitoring Officer;
- d) Fails to notify the Monitoring Officer of a Disclosable Pecuniary Interest within 28 days beginning with the day it is disclosed at a meeting, where such interest has not already been registered or notified to the Monitoring Officer;
- e) Take part in discussions or votes at meetings that relate to the Disclosable Pecuniary Interest, unless a dispensation has been granted;
- f) Knowingly or recklessly provide false or misleading information in any of the above disclosures or notifications.

**5.2** Where a complaint against a Subject Member relates to conduct of a criminal nature referred to above, the Monitoring Officer will deal with the complaint in accordance with paragraph 4(4) of Annex 1 to these Arrangements.

## **6. ANONYMOUS COMPLAINTS**

Complainants must provide their full name and address. An anonymous complaint will only be accepted by the Monitoring Officer in consultation with the Independent Person, providing it is accompanied by corroborating evidence that indicates to the Monitoring Officer that it is in the public interest to accept the complaint.

## **7. ROLE OF INDEPENDENT PERSON**

The Independent Person must be consulted and have his/her views taken into account before the Authority makes a finding as to whether a Member has failed to comply with the Code or decides on action to be taken in respect of that Member. At any other stage of the complaints process under these Arrangements, the Independent Person may be consulted by the Monitoring Officer and/or the Subject Member.

## **8. PRELIMINARY TESTS**

**8.1** The Monitoring Officer will, in consultation with the Independent Person, put the complaint through a number of preliminary tests, in accordance with paragraph 1 of Annex 1 to these Arrangements.

**8.2** In the event that the Independent Person is unavailable or unable to act, the time limits specified in paragraph 1 of Annex 1 may either be extended by the Monitoring Officer, or the Monitoring Officer may act alone in taking the decision or action.

## **9. INFORMAL RESOLUTION**

The Monitoring Officer, in consultation with the Independent Person, may consider that the complaint can be resolved informally at any stage in accordance with paragraph 6 of Annex 1 to these Arrangements.

## **10. INVESTIGATION**

**10.1** If the Monitoring Officer, in consultation with the Independent Person, decides that the complaint merits formal investigation, they will, normally within 30 working days of receiving it, appoint an Investigating Officer to undertake the investigation, and inform the Parties of the appointment.

**10.2** The Investigating Officer will investigate the complaint in accordance with Annex 2 to these Arrangements.

## **11. HEARING**

If the Monitoring Officer, in consultation with the Independent Person, considers that informal resolution is not appropriate or is unlikely to be achieved, then they will convene a meeting of the Audit and Governance Committee to determine the outcome of the complaint, in accordance with Annex 3 to these Arrangements.

## **12. SANCTIONS**

Where a Subject Member has been found by the Audit and Governance Committee to have breached the Code of Conduct, the Audit and Governance Committee may apply any one or more sanctions in accordance with paragraph 4 of Annex 3 to these Arrangements.

## **13. APPEAL**

There is no right of appeal for the Complainant or the Subject Member against decisions of either the Monitoring Officer or the Audit and Governance Committee.

## **14. REVISION OF THESE ARRANGEMENTS**

The District Council may, by resolution, agree to amend these Arrangements and has delegated to the Monitoring Officer, and the Audit and Governance Committee, the right to depart from these Arrangements, where considered expedient to do so, in order to secure the effective and fair consideration of any matter.

## **ANNEX 1 – PROCEDURE ON RECEIPT OF A COMPLAINT**

### **1. PRELIMINARY TESTS**

**1.1** The complaint will be assessed by the Monitoring Officer, in consultation with the Independent Person, against the legal jurisdiction test in paragraph 1.2 and, if applicable, the local assessment criteria test in paragraph 1.4 below:

**1.2** Legal jurisdiction criteria test:

- a) Did the alleged conduct occur before the adoption of the Code of Conduct?
- b) Was the person complained of a member of the District or Parish 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 about dissatisfaction with the District or Parish Council's decisions, policies and priorities, etc.

**1.3** If the complaint fails one or more of the jurisdiction tests, no further action will be taken by the Monitoring Officer and the complaint will be rejected. The Complainant will be notified accordingly with reasons, normally within 30 working days of receipt of the complaint by the Monitoring Officer. There is no right of appeal against the Monitoring Officer's decision.

**1.4** Local assessment criteria test:

If the complaint satisfies the jurisdiction test, the Monitoring Officer will then apply the following local assessment criteria test:

- a) The complaint is a 'repeat complaint', unless supported by new or further evidence substantiating or indicating that the complaint is exceptionally serious or significant;
- b) The complaint is anonymous, unless supported by independent documentary evidence substantiating or indicating that the complaint is exceptionally serious or significant;
- c) No or insufficient information/evidence to substantiate the complaint has been submitted by the Complainant;
- d) The complaint is malicious, trivial, politically motivated or 'tit-for-tat';

- e) The Complainant is unreasonably persistent, malicious and/or vexatious;
- f) The alleged misconduct happened more than 3 months ago;
- g) The complaint is relatively minor and dealing with the complaint would have a disproportionate effect on both public money and officers' and Members' time;
- h) The circumstances have changed so much that there would be little benefit arising from an investigation or other action;
- i) The complaint has been the subject of an investigation or other action and there is nothing more to be gained by further action being taken;
- j) The complaint is such that it is unlikely that an investigation will be able to come to a firm conclusion on the matter, e.g. where there is no firm evidence on the matter;
- k) The complaint is about a deceased person;
- l) The complaint is about a person who is no longer a District or Parish Councillor or Co-opted Member.

**1.5** If one or more of the local assessment criteria applies to the complaint, no further action will be taken by the Monitoring Officer and the complaint will be rejected. The Complainant will be notified accordingly, with reasons, normally within 30 working days of receipt of the complaint by the Monitoring Officer. There is no right of appeal against the Monitoring Officer's decision.

## **2. NOTIFICATION OF COMPLAINT TO SUBJECT MEMBER**

**2.1** Subject to any representations from the Complainant on confidentiality (see paragraph 5 below), the Monitoring Officer will notify the Subject Member (and, if applicable, the Parish Clerk).

**2.2** The Monitoring Officer may invite the Subject Member [and, if applicable, the Parish Clerk] to submit initial views on the complaint, which will be taken into account by the Monitoring Officer when they decide how to deal with the complaint (see paragraph 4 below).

## **3. ASKING FOR ADDITIONAL INFORMATION**

The Monitoring Officer may ask the Complainant and the Subject Member (and, if applicable, the Parish Clerk) for additional information before deciding how to deal with the complaint.

#### **4. WHAT PROCESS TO APPLY – INFORMAL RESOLUTION OR INVESTIGATION AND/OR NO ACTION**

**4.1** In appropriate cases, the Monitoring Officer may seek to resolve the complaint informally, without the need for an investigation [or following an investigation] (see paragraph 6 below). Where the Subject Member or the Monitoring Officer or the District or Parish Council make a reasonable offer of informal resolution, but the Complainant is not willing to accept this offer, the Monitoring Officer will take account of this in deciding whether the complaint merits formal investigation.

**4.2** The Monitoring Officer, in consultation with the Independent Person, may refer the complaint for investigation when:

- a) It is serious enough, if proven, to justify the range of sanctions available to the Audit and Governance Committee (see paragraph 4 of Annex 3 to these Arrangements);
- b) The Subject Member's behaviour is part of a continuing pattern of less serious misconduct that is unreasonably disrupting the business of the District or Parish Council and there is no other avenue left to deal with it, short of investigation, and, in considering this, the Monitoring Officer may take into account the time that has passed since the alleged conduct occurred.

**4.3** Where the complaint is referred for investigation, the Monitoring Officer may appoint an Investigating Officer who will conduct the investigation in accordance with the procedure at Annex 2 to these Arrangements.

**4.4** If the complaint identifies criminal conduct or breach of other regulations by the Subject Member or any other person, the Complainant will be advised by the Monitoring Officer to report the complaint to the police or other prosecuting or regulatory authority. Alternatively, the Monitoring Officer will consider the complaint against the legal jurisdiction criteria test and, if the complaint passes that test, he may pass the complaint to the police. Where a Complainant has been advised to refer a matter to the police, or the Monitoring Officer has referred the matter to the police, the complaints process under these Arrangements will be suspended, pending a decision/action by the police or other prosecuting or regulatory authority. Where the police or other prosecuting or regulatory authority decide to take no action on the complaint, the Monitoring Officer will lift the suspension and in consultation with the Independent Person will apply the local assessment criteria test in paragraph 1.4 above.

**4.5** The Monitoring Officer in consultation with the Independent Person, will take no action on the complaint when one or more of the following apply:

- a) On-going criminal proceedings or a police investigation into the Subject Member's conduct;

- b) Investigation cannot be proceeded with, without investigating similar alleged conduct or needing to come to conclusions of fact about events which are also the subject of some other investigation or court proceedings;
- c) The investigation might prejudice another investigation or court proceedings;
- d) On-going investigation by another prosecuting or regulatory authority;
- e) Genuine long term (3 months or more) unavailability of a key party;
- f) Serious illness of a key party.

**4.6** Normally within 60 working days of receipt of the complaint, the Monitoring Officer will notify the Complainant, Subject Member [and, if applicable, the Parish Clerk] of their decision and reasons for applying one of the following processes in the format of the Decision Notice template below:

- a) Not to refer the complaint for investigation; or
- b) To refer the complaint for investigation; or
- c) To apply the informal resolution process either before or after an investigation; or
- d) Following investigation, to refer the complaint to the Audit and Governance Committee; or
- e) To take no action and close the matter; or
- f) To refer the complaint to the relevant political group leader for action.

**4.7** The decision notice will be published on the District Council's website. There is no right of appeal against the Monitoring Officer's decision. However, in the event that the Complainant submits additional relevant information, the Monitoring Officer will consider and decide if the matter warrants further consideration under these Arrangements, in which case it shall be treated as a fresh complaint.

## **5. CONFIDENTIALITY**

**5.1** If the Complainant has asked for their identity to be withheld, this request will be considered by the Monitoring Officer in consultation with the Independent Person when they initially assesses the complaint (see paragraph 1 above).

**5.2** As a matter of fairness and natural justice, the Subject Member will usually be told who the Complainant is and will also receive details of the complaint. However, in exceptional circumstances, it may be appropriate to keep the Complainant's identity confidential or not disclose details of the complaint to the Subject Member during the early stages of an

investigation. The Monitoring Officer may withhold the Complainant's identity if they are satisfied that the Complainant has reasonable grounds for believing that they or any other person (e.g. a witness):

- a) Is either vulnerable or at risk of threat, harm or reprisal;
- b) May suffer intimidation or be victimised or harassed;
- c) Works closely with the Subject Member and are afraid of the consequences, e.g. fear of losing their job;
- d) Suffers from a serious health condition and there are medical risks associated with their identity being disclosed (medical evidence will need to be provided to substantiate this);
- e) May receive less favourable treatment, because of the seniority of the person they are complaining about, in terms of any existing District or Parish Council service provision or any tender/contract they may have with, or are about to submit to the District or Parish Council.

OR where early disclosure of the complaint:

- a) May lead to evidence being compromised or destroyed; or
- b) May impede or prejudice the investigation; or
- c) Would not be in the public interest.

**5.3** Relevant public interest factors favouring disclosure (not an exhaustive list) include:

- a) To facilitate transparency and ethical governance accountability: recognising that decision-making may be improved by constructive contributions from others;
- b) To raise public awareness: disclosing the complaint or part of it may inform the community about matters of general concern;
- c) Justice to an individual: the balance of the public interest may favour disclosure of the complaint to the Subject Member when it may not be in the public interest to disclose it to the world at large;
- d) Bringing out in the open serious concerns about the behaviour/conduct of an individual.

**5.4** The Monitoring Officer, in consultation with the Independent Person, will balance whether the public interest in accepting the complaint outweighs the Complainant's wish to have their identity (or that of another person) withheld from the Subject Member. If the Monitoring Officer decides to refuse the Complainant's request for confidentiality, they will offer the Complainant the option to withdraw their complaint. The Complainant will be notified of the Monitoring Officer's decision, with reasons, by the

Monitoring Officer. There is no right of appeal against the Monitoring Officer's decision to refuse the Complainant's request for confidentiality.

## **6. INFORMAL RESOLUTION**

**6.1** The Monitoring Officer may, in consultation with the Independent Person, seek to resolve the complaint informally, without the need for an investigation or a hearing (following an investigation). The Monitoring Officer will consult with the Complainant and the Subject Member to seek to agree what they consider to be a fair resolution which will help to ensure higher standards of conduct for the future.

**6.2** Informal resolution may be the simplest and most cost effective way of resolving the complaint and may be appropriate where:

- a) The Subject Member appears to have a poor understanding of the Code of Conduct and/or related District or Parish Council procedures; or
- b) There appears to be a breakdown in the relationship between the Complainant and the Subject Member; or
- c) The conduct complained of appears to be a symptom of wider underlying conflicts which, if unresolved, are likely to lead to further misconduct or allegations of misconduct; or
- d) The conduct complained of appears common to a number of members of the District or Parish Council, demonstrating a lack of awareness, experience or recognition of the particular provisions of the Code of Conduct and/or other District or Parish Council procedures, etc; or
- e) The conduct complained of appears to the Monitoring Officer not to require a formal censure; or
- f) The complaint appears to reveal a lack of guidance, protocols and procedures within the District or [Parish Council]; or
- g) The Complainant and the Subject Member are amenable to engaging in an informal resolution; or
- h) The complaint consists of allegations and retaliatory allegations between councillors; or
- i) The complaint consists of allegations about how formal meetings are conducted; or
- j) The conduct complained of may be due to misleading, unclear or misunderstood advice from officers.

**6.3** Informal resolution may consist of one or more of the following actions, which do not have to be limited to the Subject Member, but may extend to

other councillors, including the whole District or Parish Council, where it may be useful to address systemic behaviour:

- a) Training;
- b) Conciliation/mediation;
- c) Mentoring;
- d) Apology;
- e) Instituting changes to the District or Parish Council's procedures;
- f) Conflict management;
- g) Development of the District or Parish Council's protocols;
- h) Other remedial action by the District or Parish Council;
- i) Other steps (other than investigation), if it appears appropriate to the Monitoring Officer in consultation with the Independent Person.

**6.4** If the Subject Member is agreeable to, and complies with, the informal resolution process, the Monitoring Officer will report the matter to the Audit and Governance Committee and, if applicable, the Parish Council for information, but will take no further action against the Subject Member.

**6.5** Where the Subject Member will not participate in the informal resolution process or if, having agreed to one or more actions under the informal resolution process, the Subject Member refuses or fails to carry out any agreed action, the Monitoring Officer will report the matter to the Audit and Governance Committee.

# Councillors' Code of Conduct Complaint Form

## Your Details

### 1. Please provide us with your name and contact details.

Your address and contact details will not usually be released, unless it is necessary to deal with your complaint. However, we will tell the following people that you have made this complaint:-

The member(s) you are complaining about;  
The Monitoring Officer;  
The parish or town clerk (if applicable).

We will provide them with your name and a summary of your complaint. In certain circumstances, it may be necessary or appropriate for us to give them full details of your complaint, if this enables us to deal with it. If you have serious concerns about your name and a summary, or details, of your complaint being released, please complete section 5 of this form.

<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>	

### 2. Please tell us which complainant type best describes you:

- Member of the public
- An elected or co-opted member of an authority
- An independent member of the Audit and Governance Committee
- Member of Parliament
- Local authority Monitoring Officer
- Other council officer or authority employee
- Other (please give details) \_\_\_\_\_

**3. Please provide us with the name of the councillor(s) you believe has/have breached the Code of Conduct and the name of his/her/their authority/authorities:**

<b>Title</b>	<b>First name</b>	<b>Last name</b>	<b>Council or authority name</b>

**4. Please explain, in this section, what the councillor has done that you believe breaches the Code of Conduct.**

If you are complaining about more than one councillor, you should clearly explain what each individual person has done that you believe breaches the Code of Conduct.

It is important that you provide all the information you wish to have taken into account by the Monitoring Officer when s/he (acting in consultation with the Independent Person) decides whether to take any action on your complaint. For example:

- You should be specific, wherever possible, about exactly what you are alleging the councillor said or did. For instance, instead of writing that the councillor has conducted him/herself in a manner which could reasonably be regarded as bringing his/her office, or the authority, into disrepute, you should state what it was that s/he said or did.
- 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 any relevant background information.

Please provide us with the details of your complaint. Continue on a separate sheet if there is not enough space on this form.

**5. Only complete this section if you are requesting that your identity is kept confidential.**

In the interests of fairness and natural justice, we believe that members, who are the subject(s) of a complaint, have a right to know who has made the complaint and be provided with a summary of the complaint. We are unlikely to withhold your identity, or the details of your complaint, unless you have good reason to believe that we should.

Please note that requests for confidentiality, or requests for suppression of complaint details, will not automatically be granted. The Monitoring Officer will consider the request alongside the substance of your complaint. We will then contact you with the decision. If your request for confidentiality is not granted, we will usually allow you the option of withdrawing your complaint.

However, it is important to understand that, in certain exceptional circumstances, where the matter complained about is very serious, we can proceed with an investigation or other action and disclose your name, even if you have expressly asked us not to.

Please provide us with details of why you believe we should withhold your name and/or the details of your complaint:

- 6. Complaints must be submitted in writing. This includes fax and electronic submissions. However, in line with the requirements of the Equality Act 2010, 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 by telephoning 01303 853000.**

Signed: \_\_\_\_\_

Date: \_\_\_\_\_

Return address: The Monitoring Officer  
Folkestone and Hythe District Council  
Civic Centre  
Castle Hill Avenue  
Folkestone  
Kent  
CT20 2QY

## **ANNEX 2 – PROCEDURE FOR INVESTIGATING THE COMPLAINT**

### **1. PRELIMINARIES**

- 1.1** The Investigating Officer will be appointed by the Monitoring Officer and will be aware of their obligations under the Data Protection Act 1998, Equalities Act 2010, the Human Rights Act 1998 and other relevant legislation.
- 1.2** The Investigating Officer is responsible for gathering all the facts, documents and, where applicable, for interviewing witnesses with knowledge of the facts, and they should remain objective, impartial and unbiased at all times.
- 1.3** The Subject Member and the Complainant will be advised that the investigation is for fact finding purposes only.
- 1.4** Witnesses will be identified at the investigation stage and their evidence supported by signed and dated witness statements and/or notes of interview with the Investigating Officer. The Investigating Officer cannot compel the attendance of witnesses or their co-operation.
- 1.5** The Investigating Officer will not make recommendations on sanctions.
- 1.6** Within 10 working days of being appointed, the Investigating Officer will notify the Subject Member and the Complainant of their appointment and:
  - a) provide details of the complaint to the Subject Member;
  - b) detail the procedure to be followed in respect of the investigation and the relevant timescales for responses and concluding the investigation;
  - c) detail the sections of the Code of Conduct that appear to be relevant to the complaint;
  - d) request contact details of any potential witnesses;
  - e) require that confidentiality is maintained and that the complaint not be disclosed, members or otherwise, as may be required by law or regulation – the fact that an investigation is being conducted does not need to remain confidential.
- 1.7** It may be necessary for the Investigating Officer to agree with the Subject Member which documents will be submitted in evidence. This will generally include documents that will be relied on, or in support of, the Subject Member's case and which are relevant to the complaint.
- 1.8** The Investigating Officer may terminate their investigation at any point, where they are satisfied that they have sufficient information to enable them to report to the Monitoring Officer or Audit and Governance Committee.

## **2. THE DRAFT REPORT**

- 2.1** On the conclusion of their investigation and/or when the Investigating Officer is satisfied that they have sufficient information, or has obtained as much information as is likely to be reasonably capable of being obtained, the Investigating Officer will issue a draft report (clearly labelled DRAFT), to the Monitoring Officer, for review.
- 2.2** Following review of the draft report by the Monitoring Officer, the draft report will be sent in confidence to the Subject Member and the Complainant (not witnesses) for comment. The draft report will be marked 'confidential' and will detail:
- a) The relevant provisions of the law and the relevant paragraphs of the Code of Conduct;
  - b) A summary of the complaint;
  - c) The Subject Member's response to the complaint;
  - d) Relevant information, explanations, etc, which the Investigation Officer has obtained in the course of the investigation;
  - e) A list of any documents relevant to the matter;
  - f) A list of those persons/organisations who have been interviewed;
  - g) A statement of the Investigating Officer's draft findings of fact and reasons;
  - h) The Investigating Officer's conclusion as to whether the Subject Member has or has not failed to comply with the Authority's Code of Conduct;
  - i) That the Investigating Officer will present a final report once they have considered any comments received on the draft.
- 2.3** Once the Investigating Officer has determined that the responses received from the Subject Member and/or the Complainant add nothing of substance to the investigation, they will finalise the draft report and make their final conclusions and recommendations to the Monitoring Officer. The report will be clearly labelled FINAL.

## **3. CONSIDERATION OF INVESTIGATING OFFICER'S FINAL REPORT**

- 3.1** The Monitoring Officer will review the Investigating Officer's final report and any comments submitted by the Parties, in consultation with the Independent Person.
- 3.2** Where, on the basis of the Investigating Officer's report, the Monitoring Officer, having consulted with the Independent Person, concludes that there is no evidence of a failure to comply with the Code of Conduct, they will

inform the Parties, in writing, that no further action is considered necessary. There is no right of appeal against the Monitoring Officer's decision.

- 3.3** Where, on the basis of the Investigating Officer's report, the Monitoring Officer, having consulted with the Independent Person, concludes that there is evidence of a failure to comply with the Code of Conduct, they will either take no action or seek informal resolution or refer the matter for consideration by the Audit and Governance Committee in accordance with the relevant procedure detailed in this Annex.

## **ANNEX 3 – HEARING PROCEDURE**

### **1. RULES OF PROCEDURE**

- 1.1** These rules of procedure shall apply to the Audit and Governance Committee and the Joint Standards Hearing Committee when considering the Investigating Officer's report under these arrangements.
- 1.2** Where the Subject Member is a Parish Councillor the hearing will be conducted by the Joint Standards Hearing Committee. The Joint Committee consists of two voting elected district councillors drawn from the Audit and Governance Committee and two voting parish/town representatives appointed by the parish/town councils. Reference to the Audit and Governance Committee in these arrangements shall be deemed, where appropriate, to be a reference to the Joint Standards Hearing Committee.
- 1.3** The quorum for a meeting of the Audit and Governance Committee, under these rules of procedure, is two elected Members. The quorum for a meeting of the Joint Standards Hearing Committee is two, with a district councillor and parish/town representative present. The chairmanship of the joint committee shall alternate between a district councillor and a parish/town representative, with the chairmanship taken first by a district councillor.
- 1.4** The Independent Person's views must be sought and taken into consideration before the Audit and Governance Committee takes any decision on whether the Subject Member's conduct constitutes a failure to comply with the Code of Conduct and as to any sanction to be taken following a finding of failure to comply with the Code of Conduct. The Independent Person should normally be present throughout the hearing (but not during the deliberations of the Audit and Governance Committee in private) but in the event that this is not possible, may submit their views on the complaint to the Audit and Governance Committee in writing instead.
- 1.5** The legal requirements for publishing agendas, minutes and calling meetings, will apply to the Audit and Governance Committee. The hearing will be held in public no earlier than 14 working days after the Monitoring Officer has copied the Investigating Officer's final report to the complainant and the Subject Member. Schedule 12A of the Local Government Act 1972 (as amended) will be applied where it is necessary to exclude the public and press from meetings of the Audit and Governance Committee, where it is likely that confidential or exempt information will be disclosed.
- 1.6** Once a hearing has started, the District Council's rules of substitution do not apply to the Audit and Governance Committee proceedings.
- 1.7** All matters/issues before the Audit and Governance Committee will be decided by a simple majority of votes cast, with the Chairman having a second or casting vote.

- 1.8** Where the Subject Member fails to attend the Audit and Governance Committee and where the Audit and Governance Committee is not satisfied with their explanation for their absence from the hearing, the Audit and Governance Committee may, in the first instance, have regard to any written representations submitted by the Subject Member and may resolve to proceed with the hearing in the Subject Member's absence and make a determination or, if satisfied with the Subject Member's reasons for not attending the hearing, adjourn the hearing to another date. The Audit and Governance Committee may resolve in exceptional circumstances, that it will proceed with the hearing on the basis that it is in the public interest to hear the allegations expeditiously.

## **2. RIGHT TO BE ACCOMPANIED BY A REPRESENTATIVE**

The Subject Member may choose to be accompanied and/or represented at the Audit and Governance Committee by a fellow councillor, friend or colleague.

## **3. THE CONDUCT OF THE HEARING**

- 3.1** Subject to paragraph 3.2 below, the order of business will be as follows:
- a) Elect a Chairman (in the case of the Audit and Governance Committee, only if the Chairman and Vice-Chairman are absent);
  - b) Apologies for absence;
  - c) Declarations of interests;
  - d) In the absence of the Subject Member, consideration as to whether to adjourn or to proceed with the hearing (refer to paragraph 1.8 above);
  - e) Introduction by the Chairman, of members of the Audit and Governance Committee, the Independent Person, Monitoring Officer, Investigating Officer, legal advisor, complainant and the Subject Member and their representative;
  - f) To receive representations from the Monitoring Officer and/or Subject Member as to whether any part of the hearing should be held in private and/or whether any documents (or parts thereof) should be withheld from the public/press;
  - g) To determine whether the public/press are to be excluded from any part of the meeting and/or whether any documents (or parts thereof) should be withheld from the public/press.
- 3.2** The Chairman may exercise their discretion and amend the order of business, where they consider that it is expedient to do so in order to secure the effective and fair consideration of any matter.
- 3.3** The Audit and Governance Committee may adjourn the hearing at any time.

### **3.4 Presentation of the complaint**

- a) The Investigating Officer presents their report including any documentary evidence or other material and calls his/her witnesses. No new points will be permitted;
- b) The Subject Member or their representative may question the Investigating Officer and any witnesses called by the Investigating Officer;
- c) The Audit and Governance Committee may question the Investigating Officer upon the content of his/her report and any witnesses called by the Investigating Officer.

### **3.5 Presentation of the Subject Member's case**

- a) The Subject Member or their representative presents their case and calls their witnesses;
- b) The Investigating Officer may question the Subject Member and any witnesses called by the Subject Member;
- c) The Audit and Governance Committee may question the Subject Member and any witnesses called by the Subject Member.

### **3.6 Summing up**

- a) The Investigating Officer sums up the complaint;
- b) The Subject Member or their representative sums up their case.

### **3.7 Views/Submissions of the Independent Person**

The Chairman will invite the Independent Person to express his/her view on whether he/she considers that, on the facts presented to the Audit and Governance Committee, there has been a breach of the Code of Conduct or no breach as the case may be.

### **3.8 Deliberations of the Audit and Governance Committee**

**3.8.1(a)** The Audit and Governance Committee will adjourn the hearing and deliberate in private (assisted on matters of law by a legal advisor) to consider whether, on the facts found, the Subject Member has failed to comply with the Code of Conduct.

**3.8.1(b)** Prior to reaching a decision, the Audit and Governance Committee will consider the views expressed by the Independent Person, including any views on sanctions to be applied and/or recommendations to the District or Parish Council or Monitoring Officer.

- 3.8.1(c)** Where the complaint has a number of aspects, the Audit and Governance Committee may reach a finding, apply a sanction and/or make a recommendation on each aspect separately.
- 3.8.1(d)** The Audit and Governance Committee will make its decision on the balance of probability, based on the evidence before it during the hearing.
- 3.8.1(e)** The Audit and Governance Committee may at any time come out of private session and reconvene the hearing in public, in order to seek additional evidence from the Investigating Officer, the Subject Member or the witnesses. If further information, to assist the committee, cannot be presented, then the committee may adjourn the hearing and issue directions as to the additional evidence required and by whom.
- 3.8.1(f)** If evidence presented to the Audit and Governance Committee highlights other potential breaches of the District or Parish Council's Code of Conduct, then the Chairman will outline the committee's concerns and recommend that the matter be referred to the Monitoring Officer as a new complaint.
- 3.8.2(a)** Having deliberated on its decision and/or recommendations and the application of any sanctions, the Audit and Governance Committee will reconvene the hearing in public and the Chairman will announce that on the facts presented, the committee considers that there has been a breach of the Code of Conduct, or no breach, as the case may be. The Chairman will announce the sanctions the committee is minded to apply and/or any recommendations to the District or Parish Council and/or Monitoring Officer.
- 3.8.2(b)** The Chairman will invite the Independent Person, the Subject Member and the Monitoring Officer to make their representations as to whether any sanctions should apply and what form they should take. The Independent Person will be invited to express their view on any recommendations to the District or Parish Council or Monitoring Officer.
- 3.8.2(c)** Having heard the representations/views, the Audit and Governance Committee will adjourn and deliberate in private.
- 3.8.3** Having deliberated on its decision and/or recommendations and the application of any sanctions, and having taken into account the Independent Person's views, the Audit and Governance Committee will reconvene the hearing in public and the Chairman will announce:
- a) the Audit and Governance Committee decision as to whether or not the Subject Member has failed to comply with the Code of Conduct, and the principal reasons for the decision;
  - b) the sanctions (if any) to be applied;
  - c) the recommendations (if any) to be made to the District or Parish Council or Monitoring Officer;
  - d) that there is no right of appeal against the Audit and Governance Committee decision and/or recommendations.

#### **4. RANGE OF POSSIBLE SANCTIONS**

**4.1** Subject to paragraph 4.4 below, where the Audit and Governance Committee determines that the Subject Member has failed to comply with the Code of Conduct, any one or more of the following sanctions may be applied/recommended:

- a) Recommending to the District or Parish Council that the Subject Member be issued with a formal censure (i.e. the issue of an unfavourable opinion or judgement or reprimand) by motion;
- b) Recommending to the Subject Member's Group Leader or Parish Council, or in the case of a ungrouped Subject Member, to the District or Parish Council, that they be removed from committees or sub-committees of the Council;
- c) Recommending to the Leader of the District Council that the Subject Member be removed from the Cabinet or removed from particular Portfolio responsibilities;
- d) Instructing the Monitoring Officer [or recommendation to the Parish Council] to arrange training for the Subject Member;
- e) Recommending to the District or Parish Council that the Subject Member be removed from all outside appointments to which they have been appointed or nominated by the District or Parish Council;
- f) Recommending to the District or Parish Council that it withdraws facilities provided to the Subject Member by the Council, such as a computer, website and/or email and internet access;
- g) Recommending to the District or Parish Council the exclusion of the Subject Member from the District or Parish Council's offices or other premises, with the exception of meeting rooms as necessary for District or Parish Council committee and sub-committee meetings;
- h) Reporting the committee's findings to the District or Parish Council for information;
- i) Instructing the Monitoring Officer to apply the informal resolution process;
- j) Sending a formal letter to the Subject Member;
- k) Recommending to the District or Parish Council to issue a press release or other form of publicity;
- l) Publishing its findings in respect of the Subject Member's conduct in such manner as the committee considers appropriate.

- 4.2** The Audit and Governance Committee has no power to suspend or disqualify the Subject Member or to withdraw basic or special responsibility allowances.
- 4.3** The Audit and Governance Committee may specify that any sanction takes effect immediately or takes effect at a later date and that the sanction be time-limited.
- 4.4** When deciding whether to apply one or more sanctions referred to in paragraph 4.1 above, the Audit and Governance Committee will ensure that the application of any sanction is reasonable and proportionate to the Subject Member's behaviour. The Audit and Governance Committee will consider the following questions along with any other relevant circumstances or other factors specific to the local environment:
- a) What was the Subject Member's intention and did they know that they were failing to follow the District or Parish Council's Code of Conduct?
  - b) Did the Subject Member receive advice from officers before the incident and was that advice acted on in good faith?
  - c) Has there been a breach of trust?
  - d) Has there been financial impropriety, e.g. improper expense claims or procedural irregularities?
  - e) What was the result/impact of failing to follow the District or Parish Council's Code of Conduct?
  - f) How serious was the incident?
  - g) Does the Subject Member accept that they were at fault?
  - h) Did the Subject Member apologise to the relevant persons?
  - i) Has the Subject Member previously been reprimanded or warned for similar misconduct?
  - j) Has the Subject Member previously breached of the District or Parish Council's Code of Conduct?
  - k) Is there likely to be a repetition of the incident?

## **5. PUBLICATION AND NOTIFICATION OF THE AUDIT AND GOVERNANCE COMMITTEE DECISION AND RECOMMENDATIONS**

- 5.1** Within 10 working days of the committee's announcement of its decision and recommendations, the Monitoring Officer will publish the name of the Subject Member and a summary of the Audit and Governance Committee's decision and recommendations, and reasons for the decision and recommendations, on the District Council's website.

**5.2** Within 10 working days of the announcement of the Audit and Governance Committee's decision, the Monitoring Officer will provide a full written decision and the reasons for the decision, including any recommendations, in the format of the Decision Notice template below to:

- a) The Subject Member;
- b) The Complainant;
- c) The Clerk to the Parish Council (if appropriate);
- d) Kent County Council's standards committee (applicable only where the Subject Member is serving at both District and County level);

## **PART 9.3 - PROTOCOL FOR COUNCILLOR / EMPLOYEE RELATIONS**

### **1. INTRODUCTION**

- 1.1** The purpose of this protocol is to guide councillors and employees of the Council in their relations with one another. It aims to promote the high standards in public office that are required for a modern local government.
- 1.2** Given the variety and complexity of such relations, this protocol does not seek to be either prescriptive or comprehensive. It seeks simply to set out the general principles to be observed and to offer guidance on some of the issues which most commonly occur.

### **2. PRINCIPLES**

- 2.1** This protocol seeks to establish the roles and responsibilities of councillors and employees to avoid confusion and misunderstanding. Both employees and councillors need to understand the pressures both sides are under. Most problems between councillors and employees arise not from disagreements about policy but from a failure to understand the pressures that each other face when trying to make and implement policy.
- 2.2** The basic principles underlying the councillor/employee relationship in both directions should be:
- a) Honesty;
  - b) Openness;
  - c) Respect for the different roles; and
  - d) Courtesy and manners.
- 2.3** In addition, both councillors and employees have their own personal lives which should be respected. Except in cases of urgency or emergency, contact between councillors and employees out of office hours, on matters relating to Council business, should be avoided.
- 2.4** A councillor should not attempt or purport to give instructions to any employee or to involve him/herself in staffing matters other than as part of the Council employment practices.
- 2.5** Councillors should appreciate that employees are responsible for their conduct to their line manager. Information given by employees to councillors will routinely be passed on to other employees in the Council. Councillors should therefore not expect or ask that information, given to them by employees, should be kept confidential, as this would conflict with employees responsibilities to their managers and the Head of Paid Service
- 2.6** Where any complaints or concerns appear to be justified, these will be dealt with in accordance with the Council's policies relating to employee relations. The executive is politically accountable for strategic personnel issues and

the Head of Paid Service is responsible for the management of staff, including disciplinary and other operational matters.

### **3. ROLES OF COUNCILLORS**

**3.1** Councillors are responsible to the electorate and serve so long as their term of office lasts.

**3.2** Councillors have a variety of roles, which will differ, depending on their particular role within the Council (e.g. chairman or as a member of the executive).

**3.3** The Council has agreed a list of key roles and tasks for councillors.

**3.4** In brief, the councillor's role involves:

- a) As a member of the full Council, considering and approving Council's plans and strategic Policy Framework, its Budget and council tax;
- b) As a member of the executive, taking executive decisions;
- c) As a member of the Overview and Scrutiny Committee, scrutinising the work of the executive and recommending policy developments;
- d) As employer of staff, serving on appointment, disciplinary and grievance committees or sub – committees etc;
- e) Representing the Council on outside bodies, including management boards of voluntary bodies, school governors and partnership boards;
- f) Having a representational role, undertaking casework on behalf of the wards of the district;
- g) Fulfilling civic and ceremonial roles.

### **4. ROLE OF EMPLOYEES**

**4.1** Through the management structures, employees are responsible to the Council as a whole, which is their employer.

**4.2** Whether or not employees hold politically restricted posts they must be seen to be politically impartial and must not allow their political views to influence their actions.

**4.3** Employees are responsible for giving advice to councillors and for implementing the proper decisions of the Council.

**4.4** Employees have various roles, depending on their job. These include giving professional or technical advice, undertaking professional, technical or other jobs, and managing other employees.

**4.5** The Head of Paid Service, chief officers and heads of service are responsible for the day to day running of the Council, in accordance with the decisions of the Council or executive and, under delegated authority, the Head of Paid Service, the chief officers and heads of service are, therefore, responsible for the management of the employees and are responsible, consequently, for giving instructions and disciplining employees.

**4.6** Employees, if they are members of a professional body, will also be subject to the rules and codes of his or her particular profession.

## **5. CHAIRMAN OF THE COUNCIL**

**5.1** The Chairman of the Council should, during his/her term of office, not engage in any controversial activity which could call into question the integrity or impartiality of the office.

**5.2** The role of the Chairman is shown in greater detail in Part 2, Article 2 of the Constitution.

**5.3** The support provided to the Chairman of the Council should be used solely in discharging the civic functions associated with the office.

**5.4** The Chairman of the Council should be careful not to engage in activities which are properly the function of the Leader of the Council (and vice versa).

**5.5** The Head of Paid Service, or such other employees as s/he shall decide, should go through the agenda of Council meetings with the Chairman and shall help him or her answer questions to the extent of supplying him or her with facts. Employees must avoid straying into areas of politics or personalities.

## **6. THE EXECUTIVE AND EMPLOYEES**

**6.1** Executive councillors are elected councillors to whom have been given the responsibility for providing the Council's political administration. It is their role to develop and formulate policies which help guide employees in carrying out the Council's activities and the provisions of services. They also have responsibility for matters of major principle. They are politically accountable to the Council and the electorate for the functions contained within their individual portfolio of responsibilities, severally and jointly. It is therefore necessary for executive councillors to have timely access to advice, support and relevant information to fulfil this role effectively.

**6.2** The Head of Paid Service, with the support of other chief officers, is responsible for the management of staff, the implementation of policies approved by, or on behalf of, the Council, and for securing the proper undertaking of all operational matters. They are responsible for providing advice and guidance to the executive councillors in their respective professional and managerial fields.

- 6.3** In this role, the Head of Paid Service, and other chief officers are supported by heads of service and directly reporting managers. The latter provide more specialised and detailed advice and guidance in their field of knowledge, which is normally provided to executive councillors through the Head of Paid Service or corporate directors. The heads of service are primarily responsible for the management of staff within units and the operation of Council services on a day-to-day basis.
- 6.4** In the performance of their functions, executive councillors should normally seek advice, assistance, and such other appropriate support, from the relevant chief officer, in order to ensure that executive councillors' needs are dealt with as a priority, at the appropriate level within the organisation. In the Head of Paid Service's or chief officer's absence, contact will normally be with the head of service. This support will relate to those matters of policy and principle for which the executive councillors are responsible, but will not include matters of a political nature.
- 6.5** Employees are equipped with the professional and technical competencies, trained professionally to carry out the operations for which they are responsible in accordance with Council policy. They are insured for this activity and are entitled to certain indemnity in the event of legal challenge or claim: the distinction between policy and operations issues is therefore a significant one.
- 6.6** The responsibilities of executive councillors are significant and they require assistance and support of a highly professional nature from employees. If any member of the executive feels that the support he/she has received falls short of the expected standard, or he/she has concerns about the performance of a member of staff, this should be raised with either the relevant chief officers or with the Head of Paid Service and every effort will be made to resolve the problem.

## **7. OVERVIEW AND SCRUTINY**

- 7.1** When attending Overview and Scrutiny Committee meetings, employees should be questioned only on facts and explanations relating to policies and decisions.
- 7.2** Employees may be asked to explain and justify advice they have given to executive councillors and may also be asked to explain and justify decisions taken under delegated powers.
- 7.3** However, any questions should avoid drawing into question employees' impartiality, and questions on the merits of alternative policies should be avoided where they are politically contentious.
- 7.4** Councillors on the Overview and Scrutiny Committee are entitled to expect the same level of help and advice from employees as is given to the executive.

**7.5** The Overview and Scrutiny Committee should particularly bear in mind the Human Rights Conventions, specifically Article 8 – respect for private life.

**7.6** Where the Council engages employees to support the overview and scrutiny function, councillors should recognise that these employees continue to be responsible to the Council as a whole and not to one particular part of it.

## **8. PERSONAL RELATIONSHIPS**

**8.1** Good working relationships between employees and councillors are at the heart of good local government.

**8.2** Mutual respect between councillors and employees is essential to good local government. Close personal familiarity between individual councillors and employees can damage this relationship and prove embarrassing to other councillors and employees. The Nolan report provides the following quote to illustrate its view of the correct spirit of Member-Employee relations:

‘I do not think it is part of the proper relationship between Employees and Councillors if Employees are somehow seen in public as people who can be appropriately harangued or criticised or told that they do not know what they are doing. I think that the best relationship between officers and councillors is much more a partnership relationship’ (Gerry Stoker, Professor of Government, University of Strathclyde). This applies equally to unattributed comments through the media.

**8.3** There is potential for improper behaviour if the normal professional relationship becomes either too cosy or too combative.

## **9. EXCESSIVE FAMILIARITY**

**9.1** Councillors and employees will often work closely together and develop good relationships. This can be beneficial, but there are limits and risks for all concerned in this area and it is not enough to avoid actual impropriety. Councillors and employees should, at all times, avoid any situation which can give rise to suspicion and any appearance of improper conduct. This includes excessive socialising between employees and individual councillors. The use of first names between councillors and employees, and between councillors, is normally to be avoided at Council and committee meetings.

**9.2** Councillors must declare to their group leader, and to the Head of Paid Service, any relationship with an employee which might be seen as influencing their work as member. This includes any family, business or sexual relationships. Employees, too, have a duty to declare any such relationship to their corporate director or to the Head of Paid Service.

- 9.3** Councillors must not sit on, or participate in decisions by any Council committee or other Council body which directly affects an employee to whom they are:
- a) The partner;
  - b) Otherwise closely related; such as sisters, brothers, parents and grandparents;
  - c) In any other relationship which would jeopardise the work of the Council or make their attendance improper under the Code of Conduct.

## **10. COMBATIVENESS AND PRESSURE**

- 10.1** It is important that any dealings between councillors and employees, both written and oral, should observe reasonable standards of courtesy and that neither party should seek to take unfair advantage of their position.
- 10.2** Councillors must remember that employees cannot respond to personal criticism in the same way that politicians can and should make their comments accordingly. Councillors need to be especially careful about contact with less senior staff and must avoid deliberately or unwittingly intimidating staff. Councillors and employees should be aware that problems often arise in informal situations, where councillors and employees are sometimes prone to lose their inhibitions. This should not prevent reasonable constructive criticism of the work of employees by councillors.
- 10.3** Councillors should not put pressure on an employee on matters where employees make decisions, whether these matters have been delegated to that employee, or it is one that an employee must make by virtue of statutory provisions or for the proper performance of his/her duties. This might lead employees to make decisions that:
- a) Are not objective and cannot be accounted for;
  - b) Favour unfairly one member of the public over another.
- 10.4** Councillors should not bring undue influence to bear on an employee to take any action which is against procedure or policy, or which seeks to obtain improper advantage for a particular group, such as:
- a) A breach of human resources procedures;
  - b) Conflict with standing orders or;
  - c) Conflict with planning procedures and policies.
- 10.5** Councillors, also, should not seek to use undue pressure to influence an employee's judgement about an issue. This is particularly important in relation to report writing (see sub-paragraph 10.6).

- 10.6** Discussions between employees and councillors on policy issues are quite proper. Employees will often wish to seek political guidance in framing policy proposals. When employees write committee reports for member decision, they have a duty to give the advice dictated by their professional expertise. Councillors should not, therefore, seek to influence the content of the reports to the Council, the executive or to committees.
- 10.7** Employees must be able to report as they see fit, although councillors are equally entitled to reject proposals and recommendations which are put to them.
- 10.8** Councillors must declare any special relationships with members of the public when dealing with council employees. Although councillors are elected to represent the interests of members of the public, they should not seek special treatment for any individual if that special treatment would be against council policy.

## **11. SUMMARY OF COUNCILLOR EXPECTATIONS**

- 11.1** In summary, both councillors and employees can expect of each other reasonable standards of conduct and support. Thus councillors can reasonably expect from employees:
- a) A commitment to the authority as a whole, and not to any political group;
  - b) Respect, dignity and courtesy;
  - c) A working partnership;
  - d) That they do their job effectively and efficiently, and provide best value services;
  - e) An understanding of, and support for, respective roles, workloads and pressures;
  - f) Training and development in order to carry out their roles, workloads and pressures effectively;
  - g) Assistance in carrying out their role, as members dealing with council business;
  - h) Timely response to enquiries and complaints;
  - i) That they deal with members' enquiries fairly, efficiently, truthfully and without omission of reasonably relevant information;
  - j) Preparedness to work with all members equally and fairly;

- k) Advice or recommendations based on reasoned options, to ensure that members have all information reasonably necessary to make informed judgements;
- l) Professional advice, not influenced by political views or preference, which does not compromise the political neutrality of employees;
- m) Regular, up-to-date information on matters that can be considered appropriate and reasonably relevant to their needs, having regard to any individual responsibilities that they have.

## **12. SUMMARY OF EMPLOYEE EXPECTATIONS**

Similarly, members of staff can reasonably expect of councillors:

- a) Respect, dignity and courtesy;
- b) A working partnership;
- c) Political leadership and direction;
- d) An understanding of, and support for, respective roles, workloads and pressures;
- e) Honesty and openness;
- f) Integrity, mutual support and appropriate confidentiality;
- g) Full consideration of advice and recommendations for the purpose of making informed judgements
- h) An acceptance that employees are accountable to their manager and act independently of political bias;
- i) That they avoid getting involved in the day-to-day management of the Council;
- j) That they should never ask employees to breach council policy or procedures, to act unlawfully, or outside the terms of their job;
- k) Not to be subject to bullying or to be put under pressure;
- l) Regard to the seniority of employees in determining what are reasonable requests and to the power relationship between councillors and employees, and to the vulnerability of employees, particularly at junior levels.

## **13. EMPLOYEE/CHAIRMAN RELATIONSHIPS**

- 13.1** It is especially important that there should be a professional working relationship, between the chairman of the committee and employees

servicing that committee, on a regular basis. However, such relationships should never be allowed to become so close, or appear to be so close, as to bring into question the employee's ability to deal impartially with other councillors and other party groups.

- 13.2** In relation to action between meetings, it is important to remember that the law only allows for non-executive decisions (relating to the discharge of any of the Council's non-executive functions) to be taken by a committee, a sub-committee or an employee acting under delegated powers.
- 13.3** The chairman's role is primarily to ensure that the business transacted at a meeting is done efficiently and effectively, ensuring that members of the committee can participate equally in the discussions of the committee.
- 13.4** The employee's relationship with the chairman should reflect the primary purpose in paragraph 13.3.
- 13.5** Finally, it must be remembered that employees are accountable to their Head of Paid Service and that, whilst employees should always seek to assist the chairman (or indeed any councillor), they must not, in doing so, go beyond the bounds of whatever authority they have been given by their director.

#### **14. MONITORING THE PERFORMANCE OF EMPLOYEES**

- 14.1** Councillors should set the parameters for council work and then let employees get on with running things, as much as possible, whilst guaranteeing that strong scrutiny and performance management systems are in place.
- 14.2** Councillors have a right to criticise reports, or the actions taken by employees, but they should always:
  - a) Avoid personal attacks on employees;
  - b) Ensure that criticism is constructive and well-founded.
- 14.3** Complaints about employees or council services should be made to the appropriate corporate director where a councillor feels the fault lies, or to the Head of Paid Service, Monitoring Officer or Chief Finance Officer, as appropriate. Councillors have a duty to raise any issues that they have reason to think might involve fraud or corruption of any sort.
- 14.4** Councillors should avoid undermining respect for employees at committee meetings, or in any public or private forum. This would be damaging both to effective working relationships and to the public image of the Council. In general, employees are unable to 'answer back' or defend themselves against criticism in a public forum.
- 14.5** Councillors should remember that employees work for the Council, as a whole, and not for one particular part of it.

## **15. STRATEGIC AND OPERATIONAL MATTERS**

- 15.1** The roles of councillors are set out in paragraph 3 of this protocol. The role of the executive is further elaborated in paragraph 6. The roles of employees are shown in paragraph 4 and, in relation to the executive, paragraph 6. It is important that there is no confusion in these roles.
- 15.2** Councillors on the executive provide the strategic political leadership of the Council. Employees undertake the operational running of the Council, carrying out the lawful decisions of the Council and ensuring that the Council acts correctly.
- 15.3** An executive councillor, with a portfolio, must make decisions on issues affecting that portfolio. It is, however, not his/her job to manage the staff charged by the Head of Paid Service, and chief officers, to undertake those tasks.
- 15.4** The Head of Paid Service, chief officers and heads of service are responsible for the operational running of the Council and the performance of employees. Anything which confuses this accountability is counter-productive.

## **16. PARTY GROUPS**

- 16.1** There is now statutory recognition for party groups and it is common practice for such groups to give preliminary consideration to matters of council business in advance of such matters being considered by the relevant council decision-making body. However, party groups may not call on employees to support and contribute to such deliberations.
- 16.2** Councillors must not ask employees to act in any way which would conflict with the employee's code of conduct or which would affect, or be seen to affect, the political impartiality of employees.

## **17. WARD COUNCILLORS**

- 17.1** Whenever a public meeting is organised by the Council, to consider a local issue, all the councillors representing the ward or wards affected should, as a matter of course, be invited to attend the meeting. Similarly, whenever the Council undertakes any form of consultative exercise on a local issue, the ward councillors should be notified at the outset of the exercise.
- 17.2** Employees may only attend meetings, called by ward councillors, if this attendance is approved by a corporate director or the Head of Paid Service.
- 17.3** Ward councillors may not ask employees to provide advice, or undertake work, for organisations with which they are involved, unless that service has been approved by the relevant corporate director or Head of Paid Service.
- 17.4** In dealings with local groups employees should, as far as possible, respect the representational role that councillors have in their wards.

## **18. COUNCILLORS' ACCESS TO INFORMATION AND TO COUNCIL DOCUMENTS**

**18.1** Councillors are free to approach any service unit to provide them with such information, explanation and advice (about that unit's functions) as they may reasonably need, in order to assist them discharging their role as councillors. This can range from a request for general information about some aspect of a unit's activities to a request for specific information on behalf of a constituent. Such approaches should normally be in accordance with any employee contact list.

**18.2** The legal rights of councillors, to inspect council documents, are covered partly by statute and partly by common law.

**18.3** Councillors have a statutory right to inspect any council document, which contains material relating to any business which is to be transacted:

- a) At the Council or at a committee or sub-committee or;
- b) At a public meeting of the executive.

In the case of a private meeting of the executive, or any individual decision by an executive councillor, councillors have a statutory right to inspect documents which contain material relating to any business which has been transacted at a meeting.

**18.4** The right applies irrespective of whether the councillor is an executive councillor or a member of the committee, or sub-committee, concerned and extends not only to reports, which are to be submitted to the meeting, but also to any relevant background papers.

**18.5** The common law right of members is based on the principle that any councillor has, on the face of it, the right to inspect council documents so far as his/her access to the documents is reasonably necessary to enable the councillor properly to perform his/her duties as a councillor. This principle is commonly referred to as the 'need to know' principle.

**18.6** The exercise of this common law right depends, therefore, upon the councillor's ability to demonstrate that he/she has a 'need to know'. This question must initially be determined by the particular corporate director whose unit holds the document in question (with advice from the Council's Monitoring Officer).

**18.7** In some circumstances (e.g. a committee member wishing to inspect documents relating to the functions of the committee) a councillor's 'need to know' will normally be presumed. In other circumstances (e.g. a councillor wishing to inspect documents which contain personal information about third parties) a councillor will normally be expected to justify the request in specific terms.

- 18.8** Whilst the term ‘council document’ is very broad and includes, for example, any document produced with council resources, it is accepted by convention that a member of one party group will not have a ‘need to know’, and, therefore, a right to inspect a document which forms part of the internal workings of another party group.
- 18.9** Further and more detailed advice regarding members’ rights to inspect council documents may be obtained from the Council’s Monitoring Officer .
- 18.10** Finally, any council information provided to a councillor must only be used by the councillor for the purpose for which it was provided i.e. in connection with the proper performance of the councillor’s duties as a member of the Council.

## **19. THE MEDIA**

Dealing with the media must comply with the Code on Local Authority Publicity and the Council’s current media relations policy.

## **20. CORRESPONDENCE**

- 20.1** Where it is necessary for an employee to copy his/her correspondence to another councillor, this should be made clear to the original councillor. In other words, a system of ‘silent copies’ or ‘blind copies’ should not be employed.
- 20.2** Official letters, on behalf of the Council, which create legally binding obligations or give instructions on behalf of the Council, should never be sent out over the name of a councillor.

## **21. SUPPORT SERVICES TO COUNCILLORS**

- 21.1** Dealings with the media must comply with the Code on Local Authority Publicity and in the Council’s current Media Protocol.
- 21.2** The only basis on which the Council can provide support services, of this kind, to councillors, is to assist them discharge their role as members of the Council. They are for use on council business and to help councillors in their roles as advocates for their local communities. They should not be used in connection with party political campaigning.

## **22. REPORTING IMPROPER CONDUCT: ALLEGED MISCONDUCT BY COUNCILLORS OR EMPLOYEES**

- 22.1** A councillor or an employee may, if he/she thinks fit, report to the Audit and Governance Committee, any councillor whom he/she reasonably believes to have failed to comply with the provisions of the Code.
- 22.2** Complaints, by a councillor, of misconduct by another councillor not involving a breach of the Code, or involving a breach of the Code too trivial to justify consideration by the Audit and Governance Committee, should be

resolved by the Group Leader of the councillor complained of, in conjunction with the Group Leader of the Complainant.

- 22.3** Complaints, by an employee, of misconduct by a councillor, if not referred to the Audit and Governance Committee, should be resolved by the Group Leader of the councillor complained of.
- 22.4** Complaints, by a councillor, of misconduct by an employee, should be directed to the employee's line manager or corporate director and will be dealt with in accordance with the Council's disciplinary procedures. A copy of these procedures is available for inspection in the Council's human resources policies.

## **PART 9.4 - PLANNING CODE**

### **1. PLANNING CODE**

#### **1.1 Background**

The Planning Code of Good Practice has been prepared in response to the changes introduced by the Localism Act 2011. It also reflects the Council's own Code of Conduct for councillors, adopted under the provisions of the 2011 Act.

#### **1.2 Introduction**

**1.2.1** The aim of this code of good practice: to ensure that in the planning process there are no grounds for suggesting that a decision has been biased, partial or not well-founded in any way.

**1.2.2** The key purpose of Planning is to control development in the public interest.

**1.2.3** Your role as a member of the Planning Authority is to make planning decisions openly, impartially, with sound judgement and for justifiable reasons.

**1.2.4** When the Code of Good Practice applies: this Code applies to members at all times when involving themselves in the planning process. (This includes when taking part in the decision-making meetings of the Council, in exercising the functions of the Planning Authority (including substitutes on committees) or when involved on less formal occasions, such as meetings with officers, or the public, and consultative meetings). It applies as equally to planning enforcement matters, or site specific policy issues, as it does to planning applications.

**1.2.5** If you have any doubts about the application of this Code to your own circumstances, you should seek advice early, from the Monitoring Officer, or one of his or her staff, and preferably well before any meeting takes place.

#### **1.3 Relationship to the Members' Code of Conduct**

- **Do** apply the rules in the members' Code of Conduct first, which must be always be complied with.
- **Do** then apply the rules in this Planning Code of Good Practice, which seek to explain and supplement the members' Code of Conduct for the purposes of planning control. If you do not abide by this Code of Good Practice, you may put:
  - The Council at risk of proceedings on the legality or maladministration of the related decision; and
  - Yourself at risk of either being named in a report made to the Audit and Governance Committee or Council, or, if the failure is also

likely to be a breach of the Code of Conduct, a complaint being made to the Monitoring Officer.

## **1.4 Development proposals and interests under the Members' Code**

### **1.4.1 Where you have an interest:**

- **Do** disclose the existence and nature of your interest at any relevant meeting, including informal meetings or discussions with officers and other members. Preferably, disclose your interest at the beginning of the meeting and not just at the commencement of discussion on that particular matter.
- **Do** then act accordingly.

### **1.4.2 Where you have a Disclosable Pecuniary Interest or an Other Significant Interest:**

- **Don't** participate, or give the appearance of trying to participate, in the making of any decision on the matter by the Planning Authority.
- **Don't** try to represent ward views; get another ward member to do so instead.
- **Don't** get involved in the processing of the application.
- **Don't** seek or accept any preferential treatment, or place yourself in a position that could lead the public to think you are receiving preferential treatment, because of your position as a councillor. This would include, where you have a Disclosable Pecuniary Interest or an Other Significant Interest in a proposal, using your position to discuss that proposal with officers or members when other members of the public would not have the same opportunity to do so.
- **Do** be aware that, whilst you are not prevented from seeking to explain and justify a proposal, in which you have a Disclosable Pecuniary Interest or an Other Significant Interest, to an appropriate officer, in person or in writing, the Code places limitations on you in representing that proposal. You may address the committee but only to make a presentation in the same manner that would apply to a normal member of the public, after which you must leave the room, in the case of a Disclosable Pecuniary Interest, or sit in the public gallery, in the case of an Other Significant Interest, while the meeting considers it.
- **Do** notify the Monitoring Officer in writing and note that:
  - You should send the notification no later than submission of that application, where you can;
  - Where you are the applicant (alone or with an other(s)) the application will always be reported to the committee as a main

item and not dealt with by officers under delegated powers, unless the proposal falls within the exceptions shown in the delegation scheme.

## 1.5 Fettering discretion in the planning process

- **Don't** fetter your discretion and therefore your ability to participate in planning decision-making at this council by making up your mind, or clearly appearing to have made up your mind (particularly in relation to an external interest or lobby group), on how you will vote on any planning matter, prior to formal consideration of the matter at the meeting of the Planning Authority and of your hearing the officer's presentation and evidence and arguments on both sides.

Fettering your discretion in this way and then taking part in the decision will put the Council at risk of a finding of maladministration and of legal proceedings, on the grounds of there being a danger of bias or pre-determination, or a failure to take into account all of the factors enabling the proposal to be considered on its merits.

- **Do** be aware that you are likely to have fettered your discretion where the Council is the landowner, developer or applicant and you have acted as, or could be perceived as being, a chief advocate for the proposal. (This is more than a matter of membership of both the proposing and planning determination committees, but that through your significant personal involvement in preparing or advocating the proposal you will be, or perceived by the public as being, no longer able to act impartially or to determine the proposal purely on its planning merits.)
- Do distinguish between predetermination or bias on the one hand and predisposition on the other. Clearly expressing an intention to vote in a particular way, before a meeting (predetermination), is different from where a councillor makes it clear they are willing to listen to all the considerations presented at the committee, before deciding on how to vote (predisposition). The latter is alright; the former is not and may result in a Court quashing such planning decisions. The example in Appendix 1 may assist you.
- Do remember that public statements, by councillors, about their approach to matters of council business, will not of themselves preclude councillors from participating in the decision-making process relating to that matter. See Section 25 of the 2011 Act which provides that a councillor should not be regarded as having a closed mind, simply because they previously did or said something that, directly or indirectly, indicated what view they might take in relation to any particular matter.
- **Do** consider yourself able to take part in the debate on a proposal when acting as part of a consultee body (where you are also a member

of the parish council, for example, or both a district and county councillor), provided:

- The proposal does not substantially affect the well-being or financial standing of the consultee body;
  - You make it clear to the consultee body that:
  - Your views are expressed on the limited information before you only;
  - You must reserve judgement and the independence to make up your own mind on each separate proposal, based on your overriding duty to the whole community and not just to the people in that area, ward or parish, as and when it comes before the committee and you hear all of the relevant information; and
  - You will not in any way commit yourself as to how you or others may vote when the proposal comes before the committee; and
  - You disclose a Voluntary Announcement of Other Interests, regarding your membership or role, when the committee comes to consider the proposal.
- **Don't** speak and vote on a proposal where you have fettered your discretion. You do not also have to withdraw, but you may prefer to do so for the sake of appearances.
  - **Do** explain that you do not intend to speak and vote because you have, or you could reasonably be perceived as having judged (or reserve the right to judge) the matter elsewhere, so that this may be recorded in the minutes.
  - **Do** take the opportunity to exercise your separate speaking rights as a ward/local member where you have represented your views, or those of local electors, and fettered your discretion, but do not have a Disclosable Pecuniary Interest or Other Significant Interest. Where you do,:
    - Advise the proper officer or chairman that you wish to speak in this capacity before commencement of the item;
    - Remove yourself from the member seating area for the duration of that item and ensure that your actions are recorded.

## 1.6 Contact with applicants, developers and objectors

- **Do** refer those who approach you, for planning, procedural or technical advice, to officers.

- **Don't** agree to any formal meeting with applicants, developers or groups of objectors, otherwise than in accordance with this Code. Where you feel that a formal meeting would be useful in clarifying the issues, you should never seek to arrange that meeting yourself but should request the Head of Planning to organise it. The officer(s) will then ensure that those present at the meeting are advised, from the start, that the discussions will not bind the authority to any particular course of action, that the meeting is properly recorded on the application file and the record of the meeting is disclosed when the application is considered by the committee.
- **Do** otherwise:
  - Follow the rules on lobbying;
  - Consider whether or not it would be prudent, in the circumstances, to make notes when contacted; and
  - Report to the Head of Planning any significant contact with the applicant and other parties, explaining the nature and purpose of the contacts and your involvement in them, and ensure that this is recorded on the planning file.

#### **1.7 In addition, in respect of presentations by applicants/developers:**

- Don't attend a planning presentation unless an officer is present and/or it has been organised by officers.
- Do ask relevant questions for the purposes of clarifying your understanding of the proposals.
- Do remember that the presentation is not part of the formal process of debate and determination of any subsequent application; this will be carried out by the Planning and Licensing Committee of the Planning Authority.
- Do be aware that a presentation is a form of lobbying and you must not express any strong view, or state how you, or other members, might vote.

#### **1.8 Lobbying of councillors**

- **Do** explain to those lobbying or attempting to lobby you that, whilst you can listen to what is said, it prejudices your impartiality and, therefore, your ability to participate in the committee's decision-making to express an intention to vote one way or another, or express such a firm point of view that it amounts to the same thing.
- **Do** remember that your overriding duty is to the whole community, not just to the people in your ward and, taking account of the need to make

decisions impartially, that you should not improperly favour, or appear to improperly favour, any person company, group or locality.

- **Don't** accept gifts or hospitality from any person involved in, or affected by, a planning proposal. If a degree of hospitality is entirely unavoidable, ensure it is of a minimum, its acceptance is declared as soon as possible, and remember to register interests where its value is over £100 (in accordance with the authority's Code of Conduct).
- **Do** copy, or pass on, any lobbying correspondence you receive to the Head of Planning, at the earliest opportunity.
- **Do** promptly refer, to the Head of Planning, any offers made to you of planning gain or constraint of development through a proposed s.106 Planning Obligation or otherwise.
- **Do** inform the Monitoring Officer where you feel you have been exposed to undue or excessive lobbying or approaches (including inappropriate offers of gifts or hospitality), who will in turn advise the appropriate officers to follow the matter up.
- **Do** note that, unless you have a Disclosable Pecuniary Interest, or Other Significant Interest, you will not have fettered your discretion or breached this Planning Code of Good Practice through:
  - Listening or receiving viewpoints from residents or other interested parties;
  - Making comments to residents, interested parties, other members or appropriate officers, provided they do not consist of, or amount to, pre-judging the issue and you make clear you are keeping an open mind;
  - Seeking information through appropriate channels; or
  - Being a vehicle for the expression of opinion or speaking at the meeting as a ward member, provided you explain your actions at the start of the meeting, or item, and make it clear that, having expressed the opinion or ward/local view, you have not committed yourself to vote in accordance with those views and will make up your own mind, having heard all the facts and listened to the debate.

## 1.9 Lobbying by councillors

- **Don't** become a member of, lead, or represent an organisation whose primary purpose is to lobby, to promote, or oppose planning proposals. If you do, you will have fettered your discretion and are likely to have a Disclosable Pecuniary Interest or an Other Significant Interest.

- **Do** join general interest groups which reflect your areas of interest and which concentrate on issues beyond particular planning proposals, such as the Victorian Society, CPRE, Ramblers Association or a local civic society, but disclose a Voluntary Announcement of Other Interests where that organisation has made representations on a particular proposal, and make it clear to that organisation, and the committee, that you have reserved judgement and the independence to make up your own mind on each separate proposal.
- **Don't** excessively lobby fellow councillors regarding your concerns or views nor attempt to persuade them that they should decide how to vote in advance of the meeting at which any planning decision is to be taken.
- **Don't** decide or discuss how to vote on any application, at any sort of political group meeting, or lobby any other member to do so. Political Group meetings should never dictate how members should vote on a planning issue.

#### 1.10 Site visits and inspections

- **Do** try to attend site visits organised by the Council where possible.
- **Do** abide by the procedure for committee site visits shown in paragraph 1.15.
- **Don't** request a site visit unless you feel it is strictly necessary because:
  - Particular site factors are significant in terms of the weight attached to them relative to other factors or the difficulty of their assessment in the absence of a site inspection; or
  - There are significant policy or precedent implications and specific site factors need to be carefully addressed.
- **Do** ensure that any information which you gained from the site visit is reported back to the committee, so that all members have the same information.
- **Do** ensure that you treat the site visit only as an opportunity to seek information and to observe the site.
- **Do** ask the officers at the site visit questions or seek clarification from them on matters which are relevant to the site inspection.
- **Don't** hear representations from any other party, with the exception of the ward member(s) whose address must focus only on site factors and site issues. Where you are approached by the applicant or a third party,

- Advise them that they should make representations, in writing, to the authority and direct them to, or inform, the officer present.
- **Don't** express opinions or views to anyone.
- **Don't** enter a site, which is subject to a proposal, other than as part of an official site visit, even in response to an invitation, as this may give the impression of bias unless:
  - You feel it is essential for you to visit the site other than through attending the official site visit;
  - You have first spoken to the Head of Planning about your intention to do so and why (which will be recorded on the file); and
  - You can ensure you will comply with these good practice rules on site visits.
- **Do** inspect a site if you consider that this is necessary for your understanding of the application, provided you can do so from a public place.

#### 1.11 Public speaking at meetings

- Don't allow members of the public to communicate with you during the committee's proceedings (orally or in writing) other than through the scheme for public speaking, as this may give the appearance of bias.
- Do ensure that you comply with the Council's procedures in respect of public speaking, shown in Part 4 of this Constitution.

#### 1.12 Officers

- **Don't** put pressure on officers to put forward a particular recommendation. (This does not prevent you from asking questions or submitting views to the Head of Planning, which may be incorporated into any committee report).
- **Do** recognise that officers are part of a management structure and only discuss a proposal, outside of any arranged meeting, with a Head of Service or those officers who are authorised by their Head of Service to deal with the proposal at a member level.
- **Do** recognise and respect that officers involved in the processing and determination of planning matters must act in accordance with the Council's Code of Conduct for Officers and their professional codes of conduct, primarily the Royal Town Planning Institute's Code of Professional Conduct. As a result, planning officers' views, opinions and recommendations will be presented on the basis of their overriding obligation of professional independence, which may on occasion be at

odds with the views, opinions or decisions of the committee or its members.

### 1.13 Decision-making

- **Do** ensure that, if you request a proposal to go before the committee rather than be determined through officer delegation, that you put your reasons for your request in writing.
- **Do** ensure that the reasons for your request, for the matter to be considered by committee, are material planning issues.
- **Do** ensure that you submit your request for the matter to be brought before the committee prior to the expiry of the request period; otherwise the application may be dealt with under delegated powers by officers.
- **Do** come to meetings with an open mind and demonstrate that you are open-minded.
- **Do** comply with section 38(6) of the Planning and Compulsory Purchase Act 2004 and make decisions in accordance with the Development Plan, unless material considerations indicate otherwise.
- **Do** come to your decision only after due consideration of all of the information reasonably required upon which to base a decision. If you feel there is insufficient time to digest new information or that there is simply insufficient information before you, request that further information. If necessary, defer or refuse.
- **Don't** read a prepared statement to the committee, as this makes it appear that you have predetermined the application.
- **Don't** vote or take part in the meeting's discussion on a proposal, unless you have been present to hear the entire debate, including the officers' introduction to the matter.
- **Do** have recorded the reasons for the committee's decision to defer any proposal.
- **Do** make sure that if you are proposing, seconding or supporting a decision, contrary to officer recommendations or the development plan, that you understand the planning reasons leading to this conclusion/decision. The proposer must specify the reasons for refusal. These reasons must be given, prior to the vote, and be recorded. Be aware that you may have to justify the resulting decision by giving evidence in the event of any challenge.

## **1.14 Training**

- **Do** endeavour to attend training sessions provided, since these will be designed to extend your knowledge of planning law, regulations, procedures, codes of practice and the development plans beyond the minimum referred to above and thus assist you in carrying out your role properly and effectively.
- **Do** participate in the annual review of a sample of planning decisions to ensure that members' judgements have been based on proper planning considerations.

## **1.15 Procedure for committee site visits**

- Site visits will only take place where the expected benefit is substantial.
- Reasons for holding site visits will be fully minuted.
- Wherever possible, the committee will visit the site unaccompanied, other than by Folkestone and Hythe District ward members, and the relevant officers of the Council.
- If third parties are found to be present, they will not be allowed to speak.
- The Head of Democratic Services and Law, in consultation with the Head of Planning, will be responsible for formal notification of site visits.
- At site visits, members and officers will abide by the adopted code of conduct.
- No decisions will be taken at site visits.
- Folkestone and Hythe District Council ward members will be advised that they may be asked if there are any physical features which the committee should note, e.g. trees, topography, adjacent dwellings, position of windows etc; will be able to comment on whether the officer report has attached too much or too little weight to the physical characteristics of the site or the development and/or the relationship with the surrounding area or has overlooked other relevant site related matters; should not attempt to persuade committee members to vote in a particular way, i.e. they should not attempt to lobby them.

## **1.16. Principles of the operation of public speaking**

- 1.16.1** Public speaking applies only to those applications for planning permission reported in the schedule to the Planning and Licensing Committee and not to main agenda items.

**1.16.2** The following speakers will be allowed to address the meeting and in this order:

- A member of the public against the proposal;
- A member of the public in favour of the proposal;
- A representative of a town or parish council, a parish meeting (to represent the view of that body and not the personal view of the representative);
- Folkestone and Hythe District ward member(s); when a ward member is unable to attend, the group leader of that councillor's political party may nominate another councillor to act as a substitute for the purpose of public speaking.
- The applicant or his agent.

**1.16.3** The above will be advised of the arrangements for public speaking after the agenda for a particular meeting has been finalised. Those wishing to speak must give notice by 5.00pm on the Thursday before the date of a committee meeting.

**1.16.4** The speakers will have to put their request in writing to the Head of Planning, together with a summary of the points to be made.

**1.16.5** If there are no public speakers on a particular application, no late requests to speak will be accepted.

**1.16.6** Objectors/supporters will be allowed to speak on a 'first come, first served' basis, unless otherwise agreed between the objectors themselves. However, priority will be given to immediate neighbours over objectors with a more general interest.

**1.16.7** At the meeting, the committee will consider the items with public speaking first.

**1.16.8** Each speaker will be invited in turn to come into the chamber to address the committee.

**1.16.9** Each speaker will be able to speak for a maximum of 3 minutes and the committee officer will indicate when 2.5 minutes have elapsed.

## **APPENDIX 1: EXAMPLE OF PREDETERMINATION OR PREDISPOSITION**

A councillor who states "windfarms are blots on the landscape and I will oppose each and every windfarm application that comes before the committee" will be perceived very differently from a councillor who states: "Many people find windfarms ugly and noisy and I will need a lot of persuading that any more windfarms should be allowed in our area."

## **PART 9.5 – LICENSING CODE**

### **1. LICENSING CODE**

#### **1.1 Introduction**

**1.1.1** The aim of this Code of Good Practice: to ensure that in the licensing process there are no grounds for suggesting that a decision has been biased, partial or not well-founded in any way.

**1.1.2** Your role as a member of the Planning and Licensing Committee (which in this Code is a reference to its sub – committees): to make licensing decisions openly, impartially, with sound judgement and for justifiable reasons.

**1.1.3** When the Code of Good Practice applies: this Code applies to members at all times when involving themselves in the licensing process. (This includes when taking part in the decision-making meetings of the Council in exercising the licensing functions of the Council (including substitutes on committees) or when involved on less formal occasions, such as meetings with officers or the public). It applies as equally to licensing enforcement matters as it does to licensing applications.

**1.1.4** If you have any doubts about the application of this Code to your own circumstances you should seek advice early, from the Monitoring Officer or one of his or her staff, and preferably well before any meeting takes place.

#### **1.2 Relationship to the Members' Code of Conduct**

- **Do** apply the rules in the Members' Code of Conduct first, which must be always be complied with.
- **Do** then apply the rules in this Licensing Code of Good Practice, which seek to explain and supplement the Members' Code of Conduct for the purposes of licensing. If you do not abide by this Code of Good Practice, you may put:
  - The Council at risk of proceedings on the legality or maladministration of the related decision; and
  - Yourself at risk of either being named in a report made to the Audit and Governance Committee or Council or, if the failure is also likely to be a breach of the Code of Conduct, a complaint being made to the Monitoring Officer.

#### **1.3 Licensing and interests under the Members' Code**

##### **1.3.1 Where you have an interest:**

- **Do** disclose the existence and nature of your interest at any relevant meeting, including informal meetings or discussions with officers and other members. Preferably, disclose your interest at the beginning of the

meeting and not just at the commencement of discussion on that particular matter.

- **Do** then act accordingly.

### 1.3.2 **Where you have a Disclosable Pecuniary Interest or an Other Significant Interest:**

- **Don't** participate, or give the appearance of trying to participate, in the making of any decision on the matter by the authority.
- **Don't** try to represent ward views; get another ward member to do so instead.
- **Don't** get involved in the processing of the application.
- **Don't** seek or accept any preferential treatment, or place yourself in a position that could lead the public to think you are receiving preferential treatment, because of your position as a councillor. This would include, where you have a Disclosable Pecuniary Interest or Other Significant Interest in a proposal, using your position to discuss that proposal with officers or members when other members of the public would not have the same opportunity to do so.
- **Do** be aware that, whilst you are not prevented from seeking to explain and justify a proposal in which you have a Disclosable Pecuniary Interest or Other Significant Interest, to an appropriate officer, in person or in writing, the Code places limitations on you in representing that proposal. You may address the committee but only to make a presentation in the same manner that would apply to a normal member of the public, after which you must leave the room, in the case of a Disclosable Pecuniary Interest, or sit in the public gallery, in the case of an Other Significant Interest, while the meeting considers it.

### 1.4 **Fettering discretion in the licensing process**

- **Don't** fetter your discretion and therefore your ability to participate in licensing decision-making at this council by making up your mind, or clearly appearing to have made up your mind (particularly in relation to an external interest or lobby group) on how you will vote on any licensing matter, prior to formal consideration of the matter at the meeting of the Licensing Committee and of your hearing the officer's presentation and evidence, and arguments on both sides.

Fettering your discretion in this way and then taking part in the decision will put the Council at risk of a finding of maladministration and of legal proceedings, on the grounds of there being a danger of bias or pre-determination, or a failure to take into account all of the factors enabling the proposal to be considered on its merits.

- **Do** be aware that you are likely to have fettered your discretion where the Council is the landowner, developer or applicant and you have acted as, or could be perceived as being, a chief advocate for the proposal. (This is more than a matter of membership of both the proposing and licensing determination committees, but that through your significant personal involvement in preparing or advocating the proposal you will be, or perceived by the public as being, no longer able to act impartially or to determine the proposal purely on its licensing merits.)
- **Do** distinguish between predetermination or bias on the one hand and predisposition on the other. Clearly expressing an intention to vote in a particular way before a meeting (predetermination) is different from where a councillor makes it clear they are willing to listen to all the considerations, presented at the committee, before deciding on how to vote (predisposition). The latter is alright; the former is not and may result in a Court quashing such licensing decisions.
- **Do** remember that public statements, by councillors, about their approach to matters of council business, will not of themselves preclude councillors from participating in the decision-making process relating to that matter. See Section 25 of the Localism Act 2011, which provides that a councillor should not be regarded as having a closed mind, simply because they previously did or said something that, directly or indirectly, indicated what view they might take in relation to any particular matter.
- **Do** consider yourself able to take part in the debate on a proposal when acting as part of a consultee body (where you are also a member of the parish council, for example, or both a district and county councillor), provided:
  - The proposal does not substantially affect the well-being or financial standing of the consultee body;
  - You make it clear to the consultee body that:
    - your views are expressed on the limited information before you only;
    - you must reserve judgement and the independence to make up your own mind on each separate proposal, applying the rules of natural justice (shown in paragraph 1.13 below), as and when it comes before the committee and you hear all of the relevant information; and
    - you will not in any way commit yourself as to how you, or others, may vote when the proposal comes before the committee; and
    - you disclose a Voluntary Announcement of Other Interests, regarding your membership or role, when the committee comes to consider the proposal.

- **Don't** speak and vote on a proposal where you have fettered your discretion. You do not also have to withdraw, but you may prefer to do so for the sake of appearances.
- **Do** explain that you do not intend to speak and vote because you have, or you could reasonably be perceived as having judged (or reserve the right to judge) the matter elsewhere, so that this may be recorded in the minutes.

## 1.5 **Contact with applicants and objectors**

- **Do** refer those who approach you, for procedural or technical advice, to officers.
- **Don't** agree to any formal meeting with applicants, or groups of objectors where you can avoid it. Where you feel that a formal meeting would be useful in clarifying the issues, you should never seek to arrange that meeting yourself but should request the Senior Licensing Officer to organise it. The officer(s) will then ensure that those present at the meeting are advised, from the start, that the discussions will not bind the authority to any particular course of action, that the meeting is properly recorded on the application file, and the record of the meeting is disclosed when the application is considered by the committee. If you feel you cannot participate as a member of a committee because of your involvement in a residents' meeting, or if you are not sure, speak to the Senior Licensing Officer, or Committee Services Manager, as soon as possible.

### **Do otherwise:**

- Follow the rules on lobbying;
- Consider whether or not it would be prudent in the circumstances to make notes when contacted; and
- Report to the Head of Communities any significant contact with the applicant and other parties, explaining the nature and purpose of the contacts and your involvement in them, and ensure that this is recorded on the file.

### **In addition, in respect of presentations by applicants:**

- **Don't** attend a presentation unless an officer is present and/or it has been organised by officers.
- **Do** ask relevant questions for the purposes of clarifying your understanding of the proposals.
- **Do** remember that the presentation is not part of the formal process of debate and determination of any subsequent application. This will be carried out by the Planning and Licensing Committee.

- **Do** be aware that a presentation is a form of lobbying and you must not express any strong view or state how you, or other members, might vote.

## 1.6 Lobbying of councillors

- **Do** explain to those lobbying or attempting to lobby you that, whilst you can listen to what is said, it prejudices your impartiality, and therefore your ability to participate in the committee's decision-making, to express an intention to vote one way or another, or express such a firm point of view that it amounts to the same thing.
- **Do** remember that you need to make decisions impartially, that you should not improperly favour, or appear to improperly favour, any person, company, group or locality.
- **Don't** accept gifts or hospitality from any person involved in, or affected by, a proposal. If a degree of hospitality is entirely unavoidable, ensure it is of a minimum, its acceptance is declared as soon as possible and remember to register interests, where its value is over £100 (in accordance with the authority's rules on gifts and hospitality).
- **Do** copy or pass on any lobbying correspondence you receive to the Head of Communities, at the earliest opportunity.
- **Do** inform the Monitoring Officer where you feel you have been exposed to undue or excessive lobbying or approaches (including inappropriate offers of gifts or hospitality), who will in turn advise the appropriate officers to follow the matter up.
- **Do** complete a declaration of lobbying sheet if necessary.
- **Do** note that, unless you have a Disclosable Pecuniary Interest or an Other Significant Interest, you will not have fettered your discretion or breached this Licensing Code of Good Practice through:
  - Listening or receiving viewpoints from residents or other interested parties;
  - Making comments to residents, interested parties, other members or appropriate officers, provided they do not consist of, or amount to, pre-judging the issue, and you make clear you are keeping an open mind;
  - Seeking information through appropriate channels; or
  - Being a vehicle for the expression of opinion or speaking at the meeting as a ward member, provided you explain your actions at the start of the meeting, or item, and make it clear that, having expressed the opinion or ward/local view, you have not committed yourself to vote in accordance with those views and will make up

your own mind, having heard all the facts and listened to the debate.

## 1.7 Lobbying by councillors

- **Do** note that membership of a lobby group gives you a Voluntary Announcement of Other Interests, which you must declare at the start of the meeting. However, you can still participate and vote at the meeting, unless your interest is also a Disclosable Pecuniary Interest or an Other Significant Interest.
- **Do** join general interest groups which reflect your areas of interest and which concentrate on issues beyond particular proposals, such as a local civic society, but be aware that you may not be able to participate in any determination of a licensing application because of the rules of natural justice
- **Don't** decide or discuss how to vote on any application, at any sort of political group meeting, or lobby any other member to do so. Political Group meetings should never dictate how members should vote on a licensing issue.

## 1.8 Site visits

- **Do** try to attend site visits organised by the Council where possible.
- **Do** abide by the procedure for committee site visits shown in paragraph 1.14.
- **Don't** request a site visit unless you feel it is strictly necessary because:
  - Particular site factors are significant in terms of the weight attached to them relative to other factors or the difficulty of their assessment in the absence of a site inspection; or
  - There are significant policy or precedent implications and specific site factors need to be carefully addressed.
- **Do** ensure that any information which you gained from the site visit is reported back to the committee, so that all members have the same information
- **Do** ensure that you treat the site visit only as an opportunity to seek information and to observe the site.
- **Do** ask the officers, at the site visit, questions or seek clarification from them on matters which are relevant to the site inspection.
- **Don't** express opinions or views to anyone.

- **Don't** enter a site which is subject to a proposal other than as part of an official site visit, even in response to an invitation, as this may give the impression of bias unless:
  - You feel it is essential for you to visit the site, other than through attending the official site visit,
  - You have first spoken to the Head of Communities about your intention to do so and why (which will be recorded on the file) and
  - You can ensure you will comply with the rules on site visits.
- **Do** inspect a site if you consider that this is necessary for your understanding of the application, provided you can do so from a public place.

## 1.9 Procedure at meetings

- **Don't** allow members of the public to communicate with you during the committee's proceedings (orally or in writing) other than through the scheme for public speaking, as this may give the appearance of bias.
- **Do** ensure that you comply with the Council's procedures shown in Part 5 of this Constitution.

## 1.10 Officers

- **Don't** put pressure on officers to put forward a particular recommendation.
- **Do** recognise that officers are part of a management structure and only discuss a proposal, outside of any arranged meeting, with a head of service or those officers who are authorised by their head of service to deal with the proposal at a member level.
- **Do** recognise and respect that officers, involved in the processing and determination of licensing matters, must act in accordance with the Council's Code of Conduct for Officers and their professional codes of conduct. As a result, officers' views, opinions and recommendations will be presented on the basis of their overriding obligation of professional independence, which may on occasion be at odds with the views, opinions or decisions of the committee or its members.

## 1.11 Decision-making

- **Do** come to meetings with an open mind and demonstrate that you are open-minded.
- **Do** comply with the rules of natural justice.

- **Do** consider the human rights issues - these are explained in paragraph 1.16 below.
- **Do** come to your decision only after due consideration of all of the information, reasonably required, upon which to base a decision.
- **Don't** vote or take part in the meeting's discussion on a proposal, unless you have been present to hear the entire debate, including the officers' introduction to the matter.
- **Do** have recorded the reasons for committee's decision to defer any proposal.
- **Do** make sure that if you are proposing, seconding or supporting a decision, that you clearly identify and understand the reasons leading to this conclusion/decision. These reasons must be given prior to the vote and be recorded. Be aware that you may have to justify the resulting decision by giving evidence in the event of any challenge.

## **1.12 Training**

- **Do** endeavour to attend training sessions provided, since these will be designed to extend your knowledge of licensing law, regulations, procedures, codes of practice and the licensing policy of the Council, beyond the minimum referred to above, and thus assist you in carrying out your role properly and effectively.
- **Do** participate in any annual review of a sample of licensing decisions to ensure that members' judgements have been based on proper licensing considerations.

## **1.13 Rules of natural justice**

**1.13.1** The rules of natural justice are not obscure legalities. They are what any reasonable person would expect to see being applied in the circumstances which usually attach to the consideration of licensing applications. In basic terms, it is a duty to act fairly.

**1.13.2** The first element of natural justice is that those, who will be affected by a decision, should be allowed the opportunity of a hearing before the decision is made. This will normally extend not only to the applicant himself/herself but also to those who might wish to make representations about the application.

**1.13.3** It follows that the applicant must be given as much information as practicable of the nature of any representations about his application, in advance of the hearing, so that he may prepare his/her response, but also that every member of the committee should be provided with copies of all the submissions and observations which have been received.

**1.13.4** In addition, every member of the committee present should hear all the evidence and not be absent during any part of the hearing.

**1.13.5** The second element of natural justice is that no person should be a judge in his/her own cause. This aspect is considered more fully above under 'Licensing and interests under the members' Code'.

**1.13.6** However, it should be noted that it is not necessary for actual bias to be proved to cause a decision to fail. It is sufficient if 'a reasonable man with no inside knowledge might well think that [the committee] might be biased.'

#### **1.14 Procedure for committee site visits**

**1.14.1** Site visits will only take place where the expected benefit is substantial.

**1.14.2** Reasons for holding site visits will be fully minuted.

**1.14.3** Wherever possible, the committee will visit the site unaccompanied, other than by the relevant officers of the Council.

**1.14.4** If third parties are found to be present, they will not be allowed to speak.

**1.14.5** The Head of Democratic Services and Law, in consultation with the Head of Communities will be responsible for notification of site visits.

**1.14.6** At site visits, members and officers will abide by the adopted Code of Conduct.

**1.14.7** No decisions will be taken at site visits.

**1.14.8** At site visits, councillors should endeavour to keep together as a group and not engage individually in discussions with any applicants, objectors or other third parties who may be present. Any third parties present will not be allowed to speak. Their opportunity to speak will be at the committee, or sub-committee meeting, when the proposal is considered formally.

**1.14.9** No hospitality should be accepted at site visits, in order to be seen to maintain impartiality.

#### **1.15 Procedures at committee meetings**

**1.15.1** At a meeting of the Planning and Licensing Committee, or a sub-committee, where applications for licences are to be determined, the chairman will turn to the schedule of applications and invite the applicant, responsible authorities and interested parties to enter the meeting room and be seated.

**1.15.2** The chairman will explain the format for the meeting, as shown below, and ask everyone to introduce themselves:

- The Senior Licensing Officer introduces the application.

- If any party intends to call any witnesses, that party must seek the permission of the committee. Such consent will not be withheld unreasonably.
- The applicant or applicant's representative is asked to speak in support of their application.
- The committee members are asked if they wish to put questions to the applicant or the applicant's representative.
- Other parties may be given permission by the committee to ask questions of the applicant. However, cross-examination will not normally be permitted.
- Responsible authorities, responsible authorities' representatives, interested parties and interested parties' representatives are invited to present their representations.
- The applicant, or applicant's representative, is asked to respond to the representations of the responsible authorities and interested parties.
- The applicant, responsible authorities and interested parties may be given permission, by the committee, to ask questions of the other parties. However, cross-examination will not normally be permitted.
- The committee members are asked if they wish to put questions to any of the parties present.
- All parties are asked if they wish to add anything further.
- The Senior Licensing Officer is asked if he or she wishes to add any comments.
- The chairman asks the committee, legal officer and committee administrator to retire to another room in order to reach a decision.
- All parties will be invited to return to receive the decision and the reasons for that decision.

## **1.16 Human Rights**

### **1.16.1 Article 6** of the European Convention on Human Rights provides (in part):

'In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law.'

**The Licensing Committee's decision, on most licensing functions, are subject to independent tribunals, usually the magistrates' or Crown courts, so satisfying the provisions of Article 6.**

The committee, however, must conduct a fair hearing in accordance with the rules of natural justice.

**1.16.2 Article 1 of the First Protocol** also has relevance to the licensing function. This states:

‘Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principals of international law.

The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties.’

An existing licence is a possession under Article 1 of the First Protocol.

Any decision to, for example, revoke a licence must be according to the law. Any decision, to impose terms and conditions on the grant of a licence, will need to be proportionate and necessary to protect the interests of a democratic society.

Article 1 of the First Protocol also has relevance in respect of third parties objecting to a licensing application because of the right to the enjoyment of their property. The impact of a decision on a neighbouring property brings into play the right to respect for home, privacy and family life (Article 8)

**Article 8** reads:

**‘Article 8: Right to respect for private and family life.**

1. Everyone has the right to respect for his private and family life, his home and his correspondence
2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedom of others.’

## **PART 9.6 - DELEGATION TO WARD COUNCILLORS**

### **1. WARD COUNCILLOR BUDGETS**

- 1.1** Ward Councillor Budgets are allocated at the start of the financial year to be spent on supporting ward initiatives, in accordance with the approved Ward Budget Scheme ('the approved Scheme').
- 1.2** Ward councillors are authorised to spend up to the amount in the approved ward budgets, subject to complying with the requirements of the approved Scheme and with the ward councillor decision rules contained in the Constitution.

### **2. WARD PLANS**

- 2.1** Ward councillors are authorised to develop, agree and adopt an annual ward plan for their ward.
- 2.2** Ward plans are formally adopted through a published decision notice. In a single member ward, this requires the signature of the ward councillor in question. In multi-member wards, this requires the unanimous agreement of both/all three councillors, in order for the ward plan to be formally adopted.
- 2.3** Ward councillors, subject to obtaining the agreement of all their fellow ward members (if any), are able to submit funding bids to the executive, in accordance with the current ward plans funding scheme, to support projects that deliver against the priorities identified in their ward plans.
- 2.4** Councillors may not participate in the decision-making process on any funding bid pertaining to their own ward or where they have a Disclosable Pecuniary Interest or an Other Significant Interest under the Council's Code of Conduct for councillors.

## **PART 9.7 - WARD MEMBER ROLE DESCRIPTIONS**

### **1. Purpose**

The main purpose of the role is to act as a:

- a) **'Political representative'** – to support and help deliver the priorities of their political party, including commitments made in manifestos;
- b) **'Community advocate'** – to speak up on behalf of their community about issues which affect local people and to promote community causes;
- c) **'Community leader'** – provide long-term direction in terms of community development and to be someone who brings local communities together;
- d) **'Service transformer'** – help to improve the quality of local services in their ward and to hold service providers to account for poor quality services or service failure;
- e) **'Fixer'** – identify what things need to improve in their ward and work with officers, partners and communities to bring about change (i.e. make things happen);
- f) **'Supporter'** – support local projects and initiatives; and
- g) **'Knowledge champion'** – understand what is going on in the ward and ensure good exchange of information between the Council and the local community.

### **2. Responsibilities**

- a) To manage the allocation/award of an annual ward budget.
- b) To develop and agree an annual ward plan, through public consultation, which identifies the community priorities which the Council will address during the course of the financial year.
- c) To develop and submit business cases, in order to receive funding to support community priorities identified in the ward plan ('Ward Plans' Scheme).
- d) To take oversight of, and responsibility for, the delivery of council actions, and council-funded projects, to deliver the identified priorities in the published ward plans.

### **3. Decision-making**

To agree an annual ward plan, which sets out the local community priorities that the Council will work towards delivering during the course of the year.

#### **4. Ways of working**

- a) To take collective responsibility, and be accountable, for priorities, projects and actions agreed through ward plans.
- b) To comply with the Council's Code of Conduct for councillors and its other rules governing behaviour.
- c) To comply with the councillor/employee code of conduct contained in the Constitution.
- d) To take part in training and development, to ensure that the role is undertaken effectively.
- e) To champion equalities duties.
- f) To use technology wherever possible.

#### **5. Skills and knowledge required**

- a) Local leadership – engage with the community to learn about issues of local concern and develop a vision for the future.
- b) Partnership working – build good relationships with others to identify issues and work together towards shared goals.
- c) Communication and interpersonal skills – communicate regularly and effectively with all parts of their community, using different forms of media and communication channels.
- d) Scrutiny and challenge – ability to analyse information and present arguments that are concise, meaningful and easily understood.
- e) Networking – ability to facilitate, negotiate and influence stakeholders to achieve mutually satisfactory outcomes for local communities.
- f) Ability to work as part of a team.

## **PART 9.8**

### **FOLKESTONE AND HYTHE DISTRICT COUNCIL** **MEMBERS' ALLOWANCES' SCHEME**

Folkestone and Hythe District Council, in exercise of the powers conferred by the Local Authorities (Members' Allowances) (England) Regulations 2003, makes the following scheme:-

#### **1. CITATION**

This scheme may be cited as the Folkestone and Hythe District Council Members' Allowances' Scheme.

#### **2. INTERPRETATION**

In this scheme:-

'Councillor' means a member of the Folkestone and Hythe District Council who is a councillor.

'Year' means the 12 months ending with 31 March.

#### **3. BASIC ALLOWANCE**

Subject to paragraph 6, for each year a basic allowance of £5306.00 shall be paid to each councillor.

#### **4. SPECIAL RESPONSIBILITY ALLOWANCE**

**4.1** For each year, a special responsibility allowance (SRA) shall be paid to those councillors who have the special responsibilities, in relation to the authority, that are specified in Appendix 1 to this scheme.

**4.2** Subject to paragraph 6, the amount of each such allowance shall be the amount specified, against that special responsibility, in the appendix.

**4.3** The levels of SRA, for the different roles, are determined by a points system related to the basic allowance. The basic allowance is worth 100 points and SRAs are expressed, in points, as a percentage of this. The point scores are also shown in Appendix 1.

**4.4** If a councillor is entitled to more than one SRA, only one will be paid. The councillor will elect which one to take.

#### **5. RENUNCIATION**

A councillor may, by notice in writing, given to the Head of Finance, elect to forego any part of his/her entitlement, to an allowance, under this scheme.

## **6. PART-YEAR ENTITLEMENTS**

Where, in the course of a year, this scheme is amended, or a councillor accepts a special responsibility, in respect of which a special responsibility allowance is payable, then, subject to the provisions of paragraph 7 below, all adjustments to payments will be done pro-rata to the number of days in the year.

## **7. PROTECTION ARRANGEMENTS**

**7.1** The provisions of the following paragraphs shall apply where this scheme is amended, the result of which, would be, apart from the provisions of this paragraph, a decrease in an allowance paid to a councillor. The following paragraphs do not apply where the allowance that a councillor is entitled to is being abolished.

**7.2** Where paragraph 7.1 applies, the allowance proposed to be decreased shall remain at the same level until:-

- a) The councillor concerned ceases to be an elected member of the authority; or
- b) The councillor no longer fulfils the role which attracts the allowance; or
- c) Inflationary increases make the requirement for protection redundant;

whichever shall first occur.

## **8. DEPENDANTS' CARERS' ALLOWANCE**

**8.1** A councillor may claim a Dependants' Carers' Allowance, as set out in Appendix 2 to this scheme.

**8.2** The rate for such an allowance is an hourly rate (or proportion thereof), equivalent to the national living wage, applicable at the time, and to a total of the costs reasonably incurred.

**8.3** Paid receipts must be submitted to support claims for the Dependants' Carers' Allowance.

## **9. ICT ALLOWANCE**

An annual allowance of £251.00 is payable to each councillor, for the use of a PC, provided:-

- the personal computer meets the minimum specification agreed by the Council or the Councillor accepts a PC provided and owned by the Council;
- the councillor claiming the allowance adopts and uses information technology and;

the councillor has agreed not to routinely receive paper copies of reports, agendas and other communications from the council

## **10. CO-OPTED MEMBERS**

The Council may pay an allowance to those who are co-opted to committees. Where the Council does pay such an allowance, it shall have a value set at 15 points (the points scheme is explained in sub-paragraph 4.3).

## **11. INDEXATION**

The allowances shall be automatically adjusted, annually, by reference to the Consumer Price Index (CPI). The adjustment will be calculated on the September CPI index, for implementation the following April.

## **12. TRAVEL AND SUBSISTENCE**

**12.1** Councillors are entitled to claim for reimbursement of travel and subsistence expenses incurred in the performance of an approved duty. The approved duties are set out in the scheme of approved duties in Appendix 3.

### **12.2 Travelling by public transport**

**12.2.1** Councillors using public transport, to travel to approved duties, should claim at standard rates and provide receipts. However, if there are exceptional circumstances when it is difficult to use public transport at standard rates, or otherwise, a councillor must get prior agreement, from the Council, to use other forms of transport, such as taxis.

**12.2.2** Councillors, travelling by rail, should claim the second-class rail fare or any available cheap day fare.

### **12.3 Taxis**

In cases of emergency, or where no public transport is available, councillors, who travel by taxi, may claim the actual fare and reasonable gratuity paid. In other cases the claim should be no more than the public transport fare.

### **12.4 Use of own vehicles**

**12.4.1** Councillors, who use their own vehicles to travel to an approved duty, may claim the approved HM Revenue and Customs' rates, which vary from time to time.

**12.4.2** An additional allowance may be claimed for transporting another councillor to the same approved duty. This is the approved HM Revenue and Customs' rate and varies from time to time.

**12.4.3** Travelling expenses, payable for member's own private mode of transport, are as follows:

Cars and vans	45p per mile
Motor cycles	24p per mile
Bicycles	20p per mile

**12.4.4** In respect of the carriage of councillors, to who a travelling allowance would otherwise be payable, an allowance of 5 pence per mile is recommended as payable.

## **12.5 Accommodation and subsistence**

**12.5.1** Wherever possible, the Council will pre-book and pre-pay meals, and accommodation, for councillors attending meetings out of the authority

**12.5.2** If a councillor actually buys a meal or refreshments, as a result of carrying out an approved duty, then an allowance may be claimed. For example, if a councillor, who lives more than three miles from the Civic Centre, is away from home, for more than 4 hours, attending a meeting and buys a meal, or other refreshments, on the way home, then a claim can be made. If a councillor is required to attend more than one meeting during a day and cannot reasonably return home for a meal between meetings, then, provided a meal or refreshments are purchased, a claim may be made.

## **12.6 Receipts in support of claims**

Where possible, councillors are required to obtain and submit receipts with their claims in support of hotel bills, subsistence etc.

## **12.7 Subsistence**

**12.7.1** Subsistence expenses must have been necessarily incurred carrying out an approved duty, at a place more than three miles from home. The claim should be for the actual amount spent, up to the maximum amounts set out below:

**12.7.2** The allowance below, for absence overnight, is deemed to cover a continuous period of absence of 24 hours. Members should not claim for any meals provided free of charge.

Breakfast allowance (more than 4 hours away from normal place of residence before 11.00 am) up to	£5.88
Lunch allowance (more than 4 hours from normal place of residence, including the lunch time between 12 noon and 2.00 pm) up to	£8.13

Tea allowance (more than 4 hours away from normal place of residence, including the period 3.00 pm to 6.00 pm) up to £3.21

Evening meal allowance (more than 4 hours away from normal place of residence, ending after 7.00 pm) up to £10.06

## **12.8 Overnight provisions**

Councillors, who are required to make overnight stays, in the performance of their official duties, will be reimbursed for approved expenses.

## **APPENDICES**

**APPENDIX 1 - Table of allowances/‘point’ scores**

**APPENDIX 2 – Dependants’ carers’ scheme**

**APPENDIX 3 - Approved duties for travel and subsistence**

## APPENDIX 1 - Table of Allowances/'Point' Scores

(NOTE: all figures include the increases arising from existing arrangements in 2015 and are rounded to the nearest £1.)

Role	Point Score	Allowance from April 2019
Basic Allowance (Note 1)	100	£5,433
Co-opted members	15	£815
<b>Special Responsibility Allowance (SRA)</b>		
Leader of the Council	440	£23,905
Deputy Leader of the Council	220	£11,953
Cabinet member (up to 8)	200	£10,866
Chair of the Council	150	£8,150
Vice-Chair of the Council	30	£1,630
<b>Tier 1 committees</b>		
Audit & Governance Committee Chair	115	£6,248
Overview and Scrutiny Committee Chair	115	£6,248
Planning and Licensing Committee Chair	115	£6,248
<b>Tier 2 committees</b>		
Personnel Committee Chair	30	£1,630
<b>Leader of the Opposition</b>	150	£8,150

Note 1: Excludes ICT allowance

## **APPENDIX 2 – Dependants' Carers' Scheme**

### **Dependants' Carers' Allowance**

1. A Dependants' Carers' Allowance shall be payable to councillors, who have declared an express need for such an allowance, and have completed a written declaration, which is lodged with the Head of Democratic Services and Law.
2. The allowance shall only be payable to councillors in respect of actual expenditure incurred in connection with, or relating to, approved Council duties.
3. The allowance shall only be payable, to a councillor, in respect of the expense of arranging care of a spouse, partner, child, parent, or a person who lives in the same household as that councillor, otherwise than by reason of being his/her employee, tenant, lodger or boarder.
4. The carer must not be a member of the claimant's immediate family i.e. spouse, partner, other children of the councillor, or councillor's spouse, or any member of the councillor's family who lives at the same address as the councillor; nor should it be an employee, tenant, lodger or boarder who lives at that address.
5. Payment of the allowance shall only be made on the production of receipts.
6. The allowance will be paid at an hourly rate (or proportion thereof) equivalent to the adult national living wage, applicable at the time, and to a total of the costs reasonably incurred.
7. Only one allowance may be claimed in respect of any one household. Any issues of interpretation, or application, of this scheme will be determined by the Head of Democratic Services and Law.

## **APPENDIX 3 - Approved Duties for Travel and Subsistence**

### **1. Travel and subsistence – scheme of approved duties**

Appropriate travel and subsistence allowances, at rates determined by the Council, from time to time, may be claimed where such travel and/or subsistence has been undertaken in connection with one or more of the following duties:

- a) Attendance by any councillor at a meeting of the full Council or of the Council's Cabinet and, in the interests of the effective functioning of the democratic process, at one preparatory pre-meeting, whether organised on a political group basis, or otherwise, for each properly constituted meeting of the full Council or of the Council's Cabinet.
- b) Attendance at any committee, sub-committee, task group, working group, board, forum or panel of the Council, where the councillor making the claim is a member of that committee, sub-committee task group, working group, board, forum or panel, or where the councillor's attendance has been requested, by the relevant chairperson, to assist the work of that committee, sub-committee, task group, working group, board, forum or panel.
- c) Attendance at any sub-committee meeting of the Council's Cabinet.
- d) Attendance at meetings of any joint body, of which the Council is a member, and to which the councillor, making the claim, is appointed by the Council.
- e) Attendance at any meeting, including meetings of political sub-groups, and committees of any local government association or local government employers' organisation, of which the Council is a member, and, to which, the councillor, making the claim, has been appointed under the rules of that body, and where the appointment to that body has been approved by the Council.
- f) The attendance at any other meeting, the holding of which is authorised by the Council; or a committee or sub-committee of the Council; or a joint committee of the Council and one or more local authorities, within the meaning of section 270(1) of the Local Government Act 1972; or a sub-committee of such a joint committee, provided that:
  - i. where the authority is divided into two or more political groups, it is a meeting to which members, of at least two such groups, have been invited; or
  - ii. if the authority is not so divided, it is a meeting to which at least two members of the authority have been invited.

- g) The performance of any duty, in pursuance of a standing order, requiring a councillor(s) to be present while tender documents are opened.
- h) The performance of any duty, in connection with the discharge of any function of the Council, conferred by, or under, any enactment, and empowering, or requiring, the Council to inspect, or authorise the inspection of, premises.
- i) The carrying-out of any other duty approved by the Council, or any duty of a class so approved, for the purpose of, or in connection with, the discharge of the functions of the Council, or any of its committees or sub-committees. All duties which derive from a position of responsibility, for which a councillor receives a special responsibility allowance, are approved duties for the purpose of this paragraph.
- j)
  - a) Attendance at any training events organised by the Council, or to which the Council has authorised the attendance of the councillor making the claim, provided that such an event is not political in nature (either in whole or part) or organised by, or on behalf of, any political organisation or party.
  - b) attendance at any training event including training events of political sub-groups and committees of any local government association or local government employers' organisation where attendance at meetings of the same are authorised under para j (a) above.
- k) Conferences and meetings convened by a person, or body, whose objects are neither wholly nor partly political, and, otherwise, than in the course of a trade or business, for the purpose of discussing matters which, in the Council's opinion, will relate to the interests of Folkestone and Hythe or its inhabitants, or of part of Folkestone and Hythe or the inhabitants of part of it, are approved for the purposes of payment of travel and subsistence allowance. They are those conferences and meetings, convened by outside bodies, where the Head of Paid Service is satisfied that there is a direct connection with a function of the Council.

Subject to the budget not being exceeded, duties and activities undertaken by councillors, outside the District of Folkestone and Hythe, where the Head of Paid Service is satisfied that it is in the interests of the Council for those duties and activities to be undertaken. **Specific exclusions**

- 2.1 Travel and subsistence expenses may not be claimed in connection with any matters related to the operation or management of political groups, or meetings of political groups, or the performance of political

duties, including, but not limited to, canvassing and attendance at party political conferences, except as specifically provided for in this scheme, where it is in the interests of the effective management of the political processes of the Council, or related to the proper functioning of local government associations and employers' organisations, of which the Council is a member.

**2.2** Travel and subsistence expenses may not be claimed in relation to:

- a) Attendance at any community or voluntary group meetings, unless the councillor is nominated by the Council to represent the Council at that meeting;
- b) In connection with ward business including, but not limited to, meetings with, or on behalf of, ward residents.
- (c) By a passenger where the driver has made a claim based on carrying passengers

**2.3** Travel and subsistence may not be claimed from the Council where there are separate arrangements available to reclaim travel and subsistence from a third party; for example, where a councillor is attending a meeting of an outside body, as a representative of the Council, and is eligible to submit a claim for travel and subsistence expense to that outside body.

### **3. Review**

The provisions of this scheme will be kept under review by the Head of Democratic Services and Law and will be amended, from time to time, in consultation with the Head of Paid Service, in the light of changes to legislation and the changing needs of the Council.

### **4. Interpretation**

The Head of Paid Service's decision, on any matter of interpretation of this scheme, will be final.