

ARRANGEMENTS FOR DEALING WITH CODE OF CONDUCT COMPLAINTS UNDER THE LOCALISM ACT 2011

1. CONTEXT

- 1.1** These arrangements are made under section 28 of the Localism Act 2011. They set out the process that Folkestone Town Council has adopted for dealing with complaints that an elected Member has failed to comply with the Code of Conduct.

2. INTERPRETATION

- 2.1** 'Town Council' means Folkestone Town Council.
- 2.2** 'Code of Conduct' means the Code of Conduct, which the Town Council have 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 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** 'Hearing panel' means the panel appointed by the Town Council to determine the outcome of any complaint alleging a breach of the Code of Conduct by a Member in accordance with these Arrangements and where appropriate shall be deemed to consist of four councillors.
- 2.6** 'Independent Person' means a person or persons appointed by the Town Council under section 28(7) of the Localism Act 2011:
- a) Whose views may be sought and taken into account by the Town Council before a decision is made on any complaint alleging a breach of the Code of Conduct by a Member;
 - b) Who may be consulted by the Member about the complaint.
- 2.7** 'Investigating Officer' means the person appointed by the Town Clerk to undertake a formal investigation of a complaint alleging a breach of the Code of Conduct by a Member. The Investigating Officer may be the Town Clerk or another officer of the Town Council, an officer of another authority or an external investigator.
- 2.8** 'Monitoring Officer' is a senior officer of Folkestone & Hythe District Council who has statutory responsibility for maintaining the Register of Members' Interests.
- 2.9** 'Parties' means the Complainant, Member and the Investigating Officer, as appropriate.

2.10 'Member' means an elected member of the Town Council against whom a complaint has been made alleging a breach of the Code of Conduct.

3. APPOINTMENT OF INDEPENDENT PERSON

3.1 The Town Council may appoint an Independent Person 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 Town Council from time to time.

4. MAKING A COMPLAINT

4.1 A complaint alleging a breach of the Code of Conduct by a Member must be made in writing and addressed to the Town Clerk.

4.2 The Member will normally be informed of the identity of the Complainant and details of the complaint made against them.

4.3 The Town Clerk will normally acknowledge receipt of a complaint within 5 working days of receiving it. At the same time the Town Clerk will send a copy of the complaint to the Member and Town Mayor.

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 District 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 District 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 Town Clerk or District 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 Town Clerk or District Monitoring Officer;
- d) Fails to notify the Town Clerk 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 Town Clerk or District Monitoring Officer;
- e) Take part in discussions or votes at meetings that relate to the Disclosable Pecuniary Interest, unless a dispensation has been granted by the Town Clerk;

- f) Knowingly or recklessly provides false or misleading information in any of the above disclosures or notifications.

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

6. ANONYMOUS COMPLAINTS

6.1 Complainants must provide their full name and address. An anonymous complaint will not be accepted.

7. ROLE OF THE TOWN MAYOR AND INDEPENDENT PERSON

7.1 The Town Mayor and/or an Independent Person may be consulted and have their views taken into account before the Town Council 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 Town Clerk, Town Mayor and/or the Member.

8. PRELIMINARY TESTS

8.1 The Town Clerk will put the complaint through a number of preliminary tests, in accordance with paragraph 1 of Annex 1 to these Arrangements.

9. INFORMAL RESOLUTION

9.1 The Town Clerk, in consultation with the Town Mayor and/or Independent Person if appointed, 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 Town Clerk, in consultation with the Town Mayor and/or Independent Person, decides that the complaint merits formal investigation, will normally within 30 working days of receiving it, appoint an Investigating Officer to undertake the investigation, and inform all Parties of the appointment.

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

11. HEARING

11.1 If the Town Clerk considers that informal resolution is not appropriate or is unlikely to be achieved, then she will convene a meeting of the hearing panel to determine the outcome of the complaint in accordance with Annex 3 to these Arrangements.

12. SANCTIONS

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

13. APPEAL

13.1 There is no right of appeal for the Complainant or the Member against decisions of either the Town Clerk or the hearing panel.

14. REVISION OF THESE ARRANGEMENTS

14.1 The Town Council may by resolution agree to amend these Arrangements and has delegated to the Town Clerk and the hearing panel 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 Town Clerk in consultation with the Town Mayor and the Independent Person (if appointed) 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 Town 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 Town 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 Town Clerk and the complaint will be rejected. The Complainant will be notified accordingly with reasons, normally within 30 working days of receipt of the complaint. There is no right of appeal against the Town Clerk's decision.

1.4 Local assessment criteria test:

If the complaint satisfies the jurisdiction test, the Town Clerk 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.
- 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 Town Councillor.

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

2. NOTIFICATION OF COMPLAINT TO MEMBER

2.1 Subject to any representations from the Complainant on confidentiality (see paragraph 5 below), the Town Clerk will notify the Member.

2.2 The Town Clerk may invite the Member to submit initial views on the complaint, which will be taken into account by the Town Clerk when deciding how to deal with the complaint (see paragraph 4 below).

3. ASKING FOR ADDITIONAL INFORMATION

3.1 The Town Clerk may ask the Complainant and the Member 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 Town Clerk may seek to resolve the complaint informally, without the need for an investigation [or following an investigation]

(see paragraph 6 below). Where the Member or Town Mayor make a reasonable offer of informal resolution, but the Complainant is not willing to accept this offer, the Town Clerk will take account of this in deciding whether the complaint merits formal investigation.

4.2 The Town Clerk in consultation with the Town Mayor and the Independent Person (if appointed) may refer the complaint for investigation when:

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

4.3 Where the complaint is referred for investigation, the Town Clerk 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 Member or any other person, the Complainant will be advised by the Town Clerk to report the complaint to the regulatory authority. Alternatively the Town Clerk will consider the complaint against the legal jurisdiction criteria test and if the complaint passes that test she may pass the complaint to the regulatory authority. Where a complaint has been advised to refer a matter to the regulatory authority, the complaints process under these Arrangements will be suspended, pending a decision/action by the regulatory authority. Where the regulatory authority decide to take no action on the complaint, the Town Clerk will lift the suspension and in consultation with the Town Mayor and/or Independent Person will apply the local assessment criteria test in paragraph 1.4 above.

4.5 The Town Clerk in consultation with the Town Mayor and/or 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 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 Town Clerk will notify the Complainant and Member of the decision and reasons for applying one of the following processes in the format of a Decision Notice 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 [Hearing Panel]; or
- e) To take no action and close the matter.

4.7 There is no right of appeal against the Town Clerk's decision. However, in the event that the Complainant submits additional relevant information, the Town Clerk 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 Town Clerk in consultation with the Town Mayor and/or Independent Person when they initially assess the complaint (see paragraph 1 above).

5.2 As a matter of fairness and natural justice, the 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 Member during the early stages of an investigation. The Town Clerk 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 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 Town Parish Council service provision or any tender/contract they may have with or are about to submit to the Town 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 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 Town Clerk, in consultation with the Town Mayor and/or 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 Member. If the Town Clerk 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 Town Clerk's decision. There is no right of appeal against the Town Clerk's decision to refuse the Complainant's request for confidentiality.

6. INFORMAL RESOLUTION

6.1 The Town Clerk may, in consultation with the Town Mayor and/or Independent Person, seek to resolve the complaint informally, without the need for an investigation or a hearing (following an investigation). The Town Clerk will consult with the Complainant and the 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 Member appears to have a poor understanding of the Code of Conduct and/or related Town Council procedures; or
- b) There appears to be a breakdown in the relationship between the Town Council, Complainant and 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 Town Council, demonstrating a lack of awareness, experience or recognition of the particular provisions of the Code of Conduct and/or other Town Council procedures, etc; or
- e) The conduct complained of appears to the Town Clerk not to require a formal censure; or
- f) The complaint appears to reveal a lack of guidance, protocols and procedures within the Town Council; or
- g) The Complainant and the 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.

6.3 Informal resolution may consist of one or more of the following actions, which do not have to be limited to the Member, but may extend to other councillors including the Town Council as a whole where it may be useful to address systemic behaviour:

- a) Training;
- b) Conciliation/mediation;
- c) Mentoring;
- d) Apology;
- e) Instituting changes to the Town Council's procedures;
- f) Conflict management;
- g) Development of the Town Council's protocols;
- h) Other remedial action by the Town Council;

- i) Other steps (other than investigation) if it appears appropriate to the Town Clerk in consultation with the Town Mayor and/or Independent Person.
- 6.4** If the Member is agreeable to and complies with the informal resolution process, the Town Clerk will report the matter to the Finance and General Purposes Committee and take no further action.
- 6.5** Where the Member will not participate in the informal resolution process or if, having agreed to one or more actions under the informal resolution process, the Member refuses or fails to carry out any agreed action, the Town Clerk will report the matter to the Finance and General Purposes Committee.

ANNEX 2 – PROCEDURE FOR INVESTIGATING THE COMPLAINT

1. PRELIMINARIES

- 1.1** An Investigating Officer may be appointed by the Town Clerk and will be made aware of their obligations under the General Data Protection Regulations, 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 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 Member and the Complainant of their appointment and:
- a) provide details of the complaint to the 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 to 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 Member which documents will be submitted in evidence. This will generally include documents that will be relied on, or in support of, the 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 Town Clerk or Hearing Panel.

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 Town Clerk for review.

2.2 Following review of the draft report by the Town Clerk, the draft report will be sent in confidence to the 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 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 Member has or has not failed to comply with the 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 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 Town Clerk. The report will be clearly labelled FINAL.

3. CONSIDERATION OF INVESTIGATING OFFICER'S FINAL REPORT

- 3.1** The Town Clerk will review the Investigating Officer's final report and any comments submitted by the Parties, in consultation with the Town Mayor and/or Independent Person.
- 3.2** Where, on the basis of the Investigating Officer's report, the Town Clerk, having consulted with the Town Mayor and/or 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 Town Clerk's decision.
- 3.3** Where, on the basis of the Investigating Officer's report, the Town Clerk, having consulted with the Town Mayor and/or 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 Hearing panel in accordance with the relevant procedure detailed in this Annex.

ANNEX 3 – HEARING PANEL PROCEDURE

1. RULES OF PROCEDURE

- 1.1** The Hearing Panel consists of four voting elected Members drawn from the Finance and General Purposes Committee, one of whom shall be elected as Chairman.
- 1.2** The Town Mayor and/or Independent Person's views may be sought and taken into consideration before the Hearing Panel takes any decision on whether the 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 Town Mayor and the Independent Person should normally be present throughout the hearing (but not during the deliberations of the Hearing Panel in private) but in the event that this is not possible, may submit their views on the complaint to the Hearing Panel in writing instead.
- 1.3** The legal requirements for publishing agendas, minutes and calling meetings, will apply to the Hearing Panel. The hearing will be held in public no earlier than 14 working days after the Town Clerk has copied the Investigating Officer's final report to the complainant and the Member. Schedule 12A Local Government Act 1972 (as amended) will be applied where it is necessary to exclude the public and press from meetings of the Hearing Panel where it is likely that confidential or exempt information will be disclosed.
- 1.4** All matters/issues before the Hearing Panel will be decided by a simple majority of votes cast, with the Chairman having a casting vote.

- 1.5** Where the Member fails to attend the hearing panel and where the Hearing Panel is not satisfied with their explanation for their absence from the hearing, the Hearing Panel may in the first instance, have regard to any written representations submitted by the Member and may resolve to proceed with the hearing in the Member's absence and make a determination or, if satisfied with the Member's reasons for not attending the hearing, adjourn the hearing to another date. The Hearing Panel 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

- 2.1** The Member may choose to be accompanied and/or represented at the Hearing Panel 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;
- b) Apologies for absence;
- c) Declarations of interests;
- d) In the absence of the Member, consideration as to whether to adjourn or to proceed with the hearing (refer to paragraph 1.11 above);
- e) Introduction by the Chairman, of members of the hearing panel the Independent Person, Town Mayor, Town Clerk, Investigating Officer, legal advisor, complainant and the Member and their representative;
- f) To receive representations from the Town Clerk and/or 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 Hearing Panel 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 Member or their representative may question the Investigating Officer and any witnesses called by the Investigating Officer;
- c) The Hearing Panel 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 Member's case

- a) The Member or their representative presents their case and calls their witnesses;
- b) The Town Clerk may question the Member and any witnesses called by the Member;
- c) The Hearing Panel may question the Member and any witnesses called by the Member.

3.6 Summing up

- a) The Town Clerk sums up the complaint;
- b) The Member or their representative sums up their case.

3.7 Views/Submissions of the Independent Person

The Chairman will invite the Town Mayor and/or Independent Person to express their view on whether they consider that on the facts presented to the Hearing Panel there has been a breach of the Code of Conduct or no breach as the case may be.

3.8 Deliberations of the Hearing Panel

- a) The Hearing Panel 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 Member has failed to comply with the Code of Conduct.
- b) Prior to reaching a decision, the Hearing Panel will consider the views expressed by the Town Mayor and/or Independent Person, including any views on sanctions to be applied and/or recommendations to the Town Clerk.
- c) Where the complaint has a number of aspects, the Hearing Panel may reach a finding, apply a sanction and/or make a recommendation on each aspect separately.

- d) The Hearing Panel will make its decision on the balance of probability, based on the evidence before it during the hearing.
- e) The Hearing Panel may at any time come out of private session and reconvene the hearing in public, in order to seek additional evidence from the Town Clerk, the Member or the witnesses. If further information to assist the Panel cannot be presented, then the Panel may adjourn the hearing and issue directions as to the additional evidence required and by whom.
- f) If evidence presented to the Hearing Panel highlights other potential breaches of the Town Council's Code of Conduct, then the Chairman will outline the hearing panel's concerns and recommend that the matter be referred to the Town Clerk as a new complaint.

3.8.1

- a) Having deliberated on its decision and/or recommendations and the application of any sanctions, the Hearing Panel will reconvene the hearing in public and the Chairman will announce that on the facts presented, the Panel 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 Panel is minded to apply and/or any recommendations to the Town Council and/or Town Clerk.
- b) The Chairman will invite the Town Mayor and/or Independent Person, the Member and the Town Clerk 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 Town Council or Town Clerk.
- c) Having heard the representations/views, the Hearing Panel will adjourn and deliberate in private.

3.8.2

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 Hearing Panel will reconvene the hearing in public and the Chairman will announce:

- i) the Hearing Panel decision as to whether or not the Member has failed to comply with the Code of Conduct, and the principal reasons for the decision;
- ii) the sanctions (if any) to be applied;
- iii) the recommendations (if any) to be made to the Town Council or Town Clerk;
- iv) that there is no right of appeal against the Hearing Panel decision and/or recommendations.

4. RANGE OF POSSIBLE SANCTIONS

4.1 Subject to paragraph 4.4 below, where the Hearing Panel determines that the 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 Town Council that the 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 Town Council that they be removed from committees or panels of the Council;
- c) Instructing the Town Clerk to arrange training for the Member;
- d) Recommending to the Town Council that the Member be removed from all outside appointments to which they have been appointed or nominated by the Town Council;
- e) Recommending to the Town Council the exclusion of the Member from the Town Council's offices or other premises, with the exception of meeting rooms as necessary for Town Council committee and sub-committee meetings;
- f) Reporting the Panel's findings to Town Council for information;
- g) Instructing the Town Clerk to apply the informal resolution process;
- h) Sending a formal letter to the Member;
- i) Recommending to the Town Council to issue a press release or other form of publicity;
- j) Publishing its findings in respect of the Member's conduct in such manner as the Panel considers appropriate.

4.2 The Hearing Panel has no power to suspend or disqualify the Member or to withdraw basic or special responsibility allowances.

4.3 The Hearing Panel may specify that any sanction take effect immediately or take effect at a later date and that the sanction be time limited.

4.4 When deciding whether to apply one or more sanctions referred to in paragraph 4.1 above, the hearing panel will ensure that the application of any sanction is reasonable and proportionate to the Member's behaviour. The Hearing Panel will consider the following questions along with any other relevant circumstances or other factors specific to the local environment:

- a) What was the Member's intention and did they know that they were failing to follow the Town Council's Code of Conduct?
- b) Did the 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 Town Council's Code of Conduct?
- f) How serious was the incident?
- g) Does the Member accept that they were at fault?
- h) Did the Member apologise to the relevant persons?
- i) Has the Member previously been reprimanded or warned for similar misconduct?
- j) Has the Member previously breached of the Town Council's Code of Conduct?
- k) Is there likely to be a repetition of the incident?

5. PUBLICATION AND NOTIFICATION OF THE HEARING PANEL DECISION AND RECOMMENDATIONS

5.1 Within 10 working days of the announcement of the Hearing Panel decisions, the Town Clerk 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 Member;
- b) The Complainant;
- c) The Monitoring Officer at Folkestone & Hythe District Council (if appropriate);

5.3 The Town Clerk will report the Hearing Panel's decision and recommendations to the next ordinary meeting of the Finance and General Purposes Committee for information.