

15 January 2018 at 7.00 pm

Conference Room, Argyle Road, Sevenoaks  
Despatched: 05.01.18



## Standards Committee

### Membership:

Chairman, Cllr. Gaywood; Vice-Chairman, Cllr. Ball  
Cllrs. Bosley, McGregor, Mrs. Morris, McGarvey and Clark

### Agenda

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

	Pages	Contact
Apologies for Absence		
1. <b>Minutes</b> To agree the Minutes of the meeting of the Committee held on 18 October 2017, as a correct record.	(Pages 1 - 2)	
2. <b>Declarations of interest</b> Any interests not already registered		
3. <b>Monitoring Officer's Annual Report</b>	(Pages 3 - 34)	Martin Goodman Tel: 01732227245
4. <b>Arrangements for dealing with Code of Conduct complaints.</b>	(Pages 35 - 68)	Martin Goodman Tel: 01732227245

### EXEMPT INFORMATION

At the time of preparing this agenda there were no exempt items. During any such items which may arise the meeting is likely NOT to be open to the public.

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

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

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**STANDARDS COMMITTEE**

Minutes of the meeting held on 18 October 2017 commencing at 7.00 pm

Present: Cllr. Gaywood (Chairman)

Cllr. Ball (Vice Chairman)

Cllrs. Bosley, McGregor and Mrs. Morris

Apologies for absence were received from Cllrs. Clark and McGarvey and Clark

1. Minutes

Resolved: That the minutes of the Standards Committee held on 11 January 2017 be agreed and signed as a correct record.

2. Declarations of interest

There were no additional declarations of interest.

3. The Role of the Standards Committee

The Monitoring Officer presented his report on the Role of the Standards Committee, which set out the Terms of Reference described in Part 3 of the Council's Constitution.

The Chairman invited comments on the report and Members expressed a wish to review the arrangements for dealing with Code of Conduct Complaints. To this end it was suggested by the Chairman that a sub-committee be formed composed of Cllrs. Morris and McGregor and also in his absence Cllr. McGarvey, the Chairman to discuss this with him at a later date.

The Chairman asked whether the Monitoring Officer would be able to report on this to the Standards Committee meeting of January 2018. Members agreed that the sub-committee should meet to review the arrangements in time to be put on the next agenda before the January 2018 meeting.

The Monitoring Officer reminded the Committee that changes to the arrangements for dealing with Code of Conduct complaints could only be made by Full Council following consideration by the Governance Committee.

The Committee considered the frequency of its meetings and agreed that one, or two, per year was sufficient. Cllr. Bosley asked whether it was easy to add a new meeting to the calendar. The Monitoring Officer advised that the calendar of

## Agenda Item 1

### Standards Committee - 18 October 2017

committee meetings was set by Annual Council which would decide how often the Committee would meet but that new meetings could be arranged.

Members expressed a wish for information on complaints dealt with during the year and the Chairman asked whether it would be possible for the Monitoring Officer to provide him with a periodical report on complaints considered. The Monitoring Officer agreed that this would be possible.

The Committee thanked the Independent Persons for attending the meeting and noted that the next meeting would receive the Monitoring Officer's Annual Report.

#### Public Sector Equality Duty

Members noted that consideration had been given to impacts under the Public Sector Equality Duty.

Resolved: That the Monitoring Officer's report on the role of the Standards Committee be noted and that it be recommended that the comments made by Members at the meeting be considered.

THE MEETING WAS CONCLUDED AT 7.56 PM

CHAIRMAN

## MONITORING OFFICER'S ANNUAL REPORT

Standards Committee - 15 January 2018

Report of Monitoring Officer

Status: For consideration

Also considered by: Council - 20 February 2018

Key Decision: No

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**This report supports the Key Aim of effective management of Council resources.**

**Contact Officer(s)** Martin Goodman - Monitoring Officer Ext, 7245

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**Recommendation to the Standards Committee:** That the Monitoring Officer's Annual Report be noted.

**Recommendation to Full Council:** That the Monitoring Officer's Annual Report be noted.

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**Reason for recommendation:** This report sets out the work of the Monitoring Officer and Standards Committee. It also reports upon the governance arrangements monitored by other committees and as such provides information on the ethical standards set by the Council. It is intended to promote Member and public confidence in the Council's governance framework and standards regime.

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### Introduction and Background

- 1 The thirteenth Annual Report of the Monitoring Officer is attached as an Appendix to this report.
- 2 The purpose of the Monitoring Officer's Report is to provide an annual overview of the work of the Monitoring Officer, the work of the Standards Committee and the general governance arrangements of the Council.
- 3 Reporting provides an opportunity to review and learn from experience. The Report also gives Members of the Standards Committee background information to facilitate the carrying out of their functions.

### Substance of Report

- 4 The Monitoring Officer's Report sets out the Monitoring Officer's statutory responsibilities, summarises how these duties have been discharged during 2017 in accordance with legislation and the Council's Constitution. If

## Agenda Item 3

necessary it can draw attention to those issues requiring attention in the coming year.

### Key Implications

#### Financial

- 5 The Monitoring Officer's Report has not identified any financial implications for this Council over and above normal requirements.

#### Legal Implications and Risk Assessment Statement.

- 6 The Monitoring Officer's Report has not uncovered any illegality.

#### Equality Assessment

- 7 The decisions recommended through this paper have a remote or low relevance to the substance of the Equality Act. There is no perceived impact on end users.

### Conclusions

- 8 The Monitoring Officer's report sets out the elements of good governance and demonstrates that robust procedures are in place to raise ethical standards, identify problems and ensure that Members, Officers and the Public are aware of appropriate channels to raise concerns.

### Appendices

Appendix - Monitoring Officer's Report with attachments (LGSCO Annual Review Letter and OSC Inspection Report)

### Background Papers:

None

**Martin Goodman**  
**Monitoring Officer**

**REPORT OF THE  
MONITORING OFFICER  
2017**

**Introduction**

This is the thirteenth Annual Report of the Monitoring Officer, for the period January 2017 to December 2017. The purpose of the Monitoring Officer’s Report is to provide an annual overview of the work of the Monitoring Officer, the work of the Standards Committee and the general governance arrangements of the Council. Reporting provides an opportunity to review and learn from experience.

The Report also gives Members of the Standards Committee background information to facilitate the carrying out of their functions. The Monitoring Officer’s Report sets out the Monitoring Officer’s statutory responsibilities and summarises how these duties have been discharged during 2017 in accordance with legislation and the Council’s Constitution. Where necessary the Report can draw attention to those issues requiring attention in the coming year.

**1. Recommendations**

That the Standards Committee notes the Monitoring Officer’s Annual Report.

That Full Council notes the Monitoring Officer’s Annual Report.

**2. The Role of the Monitoring Officer**

The role of the Monitoring Officer derives from the Local Government and Housing Act 1989. The Act requires local authorities to appoint a Monitoring Officer.

The Monitoring Officer has a broad role in ensuring the lawfulness and fairness of Council decision making, ensuring compliance with Codes and Protocols and promoting good governance and high ethical standards.

A Summary of the Monitoring Officer’s Functions is as follows:

<u>Description</u>	<u>Source</u>
Report on contraventions or likely contraventions of any enactment or rule of law	Local Government and Housing Act 1989
Report on any maladministration or injustice where the Ombudsman has carried out an investigation	Local Government and Housing Act 1989
Appoint a Deputy	Local Government and Housing Act 1989



<u>Description</u>	<u>Source</u>
Establish and maintain the Register of Members' interests.	The Localism Act 2011 (Commencement No. 6 and Transitional, Savings and Transitory Provisions) Order 2012 The Localism Act 2011 The Relevant Authorities (Disclosable Pecuniary Interests) Regulations 2012
Report on sufficiency of resources.	Local Government and Housing Act 1989
Maintain the Constitution	The Constitution
Promote and maintain high standards of conduct.	The Localism Act 2011
Grant Dispensations	The Localism Act 2011 and delegation from Council
Consulting with, supporting and advising the Head of Paid Service and s.151 Officer on issues of lawfulness and probity.	The Constitution
Appointing an Investigating Officer in relation to Member Complaints	The Localism Act 2011 and the Constitution
Advising the Standards Hearings Sub Committee in relation to allegations of breaches of the Code of Conduct and advising when matters are determined following an investigation	The Localism Act 2011 and the Constitution
Advise on whether executive decisions are within the Budget & Policy Framework.	The Constitution
Provide advice on vires issues, maladministration, financial impropriety, probity, Budget and Policy Framework issues to all members.	The Constitution and s.5 of Local Government and Housing Act 1989
Legal Advice and Support to the authority	The Constitution
Considering whether certain Information is exempt from disclosure under the Freedom of Information Act.	Freedom of Information Act 2000

### 3. The Constitution

The Constitution sets out how the Council operates and how decisions are made. It sets out the procedures which are followed to ensure that these decisions are efficient, transparent and that those who make the decisions are accountable to local people. The Monitoring Officer is responsible for ensuring that the Constitution operates efficiently, is properly maintained and followed.

#### 3.1 Constitutional Review and Revision

This Council continues to update its Constitution as and when necessary and reports to the Governance Committee of the Council in this respect. During the year there were no substantial revisions to the Council's constitution.

#### 3.2 Fitness for Purpose

The Constitution sets out in clear terms how the Council operates and how decisions are made. Some of these processes are required by law, while others are a matter for the Council to choose. The purpose of the Constitution is to:

- ensure that those responsible for decision making are clearly identifiable to local people and that they explain the reasons for decisions;
- support the active involvement of local people in local authority decision making;
- help Members represent local people more effectively;
- enable decisions to be taken efficiently and effectively; and
- hold decision makers to public account.

#### 3.3 Managing the Constitution

Any significant changes to the Council's decision making arrangements and Committee structure need to be approved by full Council. The Council will monitor and review the operation of the Constitution to ensure that the aims and principles of the Constitution are given full effect. The Governance Committee ensures that this takes place.

### 4. Lawfulness and Maladministration

The Monitoring Officer is the Council's lead adviser on issues of lawfulness and the Council's powers and in consultation with the Head of Paid Service and the Chief Finance Officer (s.151 Officer) advises on compliance with the Budget and Policy Framework. Part of this role involves monitoring Committee reports, agendas and decisions to ensure compliance with legislation and the Constitution.

The Monitoring Officer ensures that agendas, reports and minutes of all Council meetings are made publicly available unless there is a reason for exemption under the Local Government Act 1972. In addition, Portfolio Holder decisions are also made publicly available subject to the same caveat as are all planning and licensing

decisions made by Officers including other Officer delegated decisions as required by the Openness of Local Government Bodies Regulations 2014. It is of course the Council's position that where required by law all such decisions should easily be accessible by members of the public through the Council's website: [www.sevenoaks.gov.uk](http://www.sevenoaks.gov.uk).

If the Monitoring Officer considers that any proposal, decision or omission would give rise to unlawfulness or if any decision or omission has given rise to maladministration he must report to the full Council or where appropriate the Cabinet after first consulting with the Head of Paid Service and the Chief Finance Officer (s.151 Officer). Any proposal or decision that is subject to such a report cannot be implemented until the report has been considered.

The sound governance arrangements operated by the Council ensure that the power to report potentially unlawful decision making is rarely used and the Monitoring Officer has not had to issue such a report throughout 2017.

#### 4.1 Reports from the Local Government Ombudsman

On 20 July 2017 the Local Government and Social Care Ombudsman wrote to the Council with its Annual Review Letter, which is attached. There has been a slight change in the official name and branding of the Ombudsman (including 'Social Care') but during the year no changes had been made to remit.

In 2016/17 the Local Government and Social Care Ombudsman received eleven complaints about the Council. The Council has queried that one complaint relating to Adult Care Services was counted in this number, which we believe relates to Kent County Council, however the other ten complaints related to Benefits and Tax (2), Corporate and Other Services (2), Highways and Transport (1), Housing (1) and Planning and Development (4).

During the year, thirteen decisions were made by the Local Government and Social Care Ombudsman. Six were referred back for local resolution, four were closed after initial enquiries and the remaining three were not upheld. Of the three cases finding no maladministration, two related to Development Services and one to Parking Services.

There is no comparative data with other Local Authorities this year. Back in 2016 the government announced the intention to produce draft legislation for the creation of a single ombudsman for public services in England. The Local Government and Social Care Ombudsman is in support of this proposal as it feels the public would be provided with a clearer route to redress in an increasingly complex environment of public service delivery.

#### 5. Good Governance

The Monitoring Officer has a pro-active role in promoting good practice, good procedures and good governance. This involves networking, collaboration, joined-up working practices and decision making as well as ensuring standing orders, codes of practice, procedures are kept under review and up to date. The Monitoring

Officer regularly meets with the Head of Paid Service (the Chief Executive) and sits on Strategic Management Team with the Chief Officers including the s.151 officer (Chief Finance Officer). The Monitoring Officer also works in partnership with officers of the Council to develop and disseminate policies and procedures.

#### **6. Quercus 7 and other company activities**

On the last day of 2015 the Council stepped up its efforts to bring further economic growth to the District by establishing a Trading Company wholly owned by the Council so as to exercise the power to trade contained in the Local Government Act 2003 and the Localism Act 2011. The first board meeting of this Trading Company took place on 15 November 2016 and the Monitoring Officer is the Company Secretary.

The first Trading Board of the Company sat on 15 June 2017. The Trading Board consists of the Cabinet of the Council. It approved a business plan for the Company and will continue to monitor its progress and where necessary issue directions to the Board of Directors.

In case of conflict of interest the officers of the Legal Department and the Chief Officer Corporate Services are available to procure independent advice to the Council on issues arising from this arrangement.

It should be remembered that Quercus 7 is a company and not part of the Council. No member is in control of the company and the Council collectively holds the one share. The role of the Monitoring Officer therefore does not apply to the operations of Quercus 7.

During the year it became clear that Members wished to explore the possibility of creating a second company, established to provide affordable housing on a non-for-profit basis. If created, the company will be charged with the provision of affordable housing by spending available s.106 funds. The Monitoring Officer is likely to be appointed Company Secretary of the company if it is formed but, as for Quercus 7, the company would be in the private sector and not part of the Council.

#### **7. The Ethical Framework and Work of the Standards Committee**

The Standards Committee (introduced on the 24 July 2012) comprises seven Members. Legislation allows for the appointment of Independent Persons, who have a statutory role under the Localism Act 2011 to assist any Member who has been accused of breaching the Code of Conduct. Sevenoaks District Council has appointed two Independent Persons. They are not co-opted Members of the Standards Committee although they are given details of the Committee's meeting date in order that they may attend.

The Independent Persons also assist the Monitoring Officer in considering complaints and are consulted by the Monitoring Officer following investigations to help decide what action to take.

The Standards Committee has a key role in facilitating and promoting the Ethical Framework and in promoting and maintaining high standards of conduct within the

Authority. The terms of reference of the committee are set out within Part 3 of the Constitution entitled “Standards Committee”.

Examples of the Standards Committee’s work during 2017 are as follows:

- Receiving the Annual Monitoring Officer’s Report
- Being on Standby to grant Dispensations
- Being on Standby to carry out hearings.

## **8. Disclosable Pecuniary Interests and Non-Pecuniary Interests**

The codes of conduct of relevant authorities must include provision for the registration and disclosure of Disclosable Pecuniary Interests (DPIs) as defined in the Relevant Authorities (Disclosable Pecuniary Interests) Regulations 2012. The Localism Act 2011 introduced criminal offences for failure to register DPIs.

On 22 November 2016 Members received training to remind them that they commit a criminal offence if they participate or vote when they have a DPI ‘in’ a matter. A Member has a DPI ‘in’ a matter where it is, or includes, his interest - where there is a close alignment between the interest and the matter under consideration. Ultimately the responsibility for complying with this provision lies upon Members although the Monitoring Officer will provide advice as necessary. This training was not repeated in 2017 although from time-to-time Members sought advice on interests.

Disclosable pecuniary interests are defined in the Relevant Authorities (Disclosable Pecuniary Interests) Regulations 2012. Members are aware that even if a Member’s interest does not amount to a disclosable pecuniary interest, if their interest in a matter would lead them to predetermine a decision, or look like they are biased, it would not be appropriate for that member to participate in the decision. If they did so the decision could be vulnerable to challenge. The Sevenoaks District Council Code of Conduct also requires the registration of certain non-pecuniary interests, although no criminal liability attaches to a failure to register.

The prohibitions on councillors participating in any discussion or vote on an item of Council business in which they have a DPI ensures that Councillors cannot put their private financial interests before the public interest. However, where a Councillor has a disclosable pecuniary interest but stand to make no personal financial gain by participating in a discussion or vote on Council business related to that interest, they can apply for a dispensation, under section 33 of the Localism Act 2011. The grounds for granting a dispensation will depend on the circumstances.

Dispensations are mostly considered by the Standards Sub-Committee for Granting Dispensations, although the Monitoring Officer has power to grant dispensations in circumstances where a meeting may not be quorate. In respect of parish and town councils, the Clerk has the power to consider and grant dispensations.

Members convicted of offences under the Act are liable to a fine of £5,000 and may also be disqualified from being a councillor for up to five years.

## **9. Code of Conduct for Employees**

The Code is based on an original draft published by the IDeA and has been updated since being implemented in 2006. The Code forms part of the employers' terms and conditions of employment. The Code is available on the Council's intranet and is introduced to employees during the induction process along with relevant policies.

Under the Code employees must declare any non-financial or financial interests that they or members of their family have which they consider could conflict with the Council's interests. Chief Officers and the Chief Executive declarations of non-financial or financial interests are declared to the Monitoring Officer.

All relationships of a business or private nature with external contractors, or potential contractors should be made known to the employees' Managers and Chief Officers. All hospitality received and given should be appropriate, necessary and must, wherever possible, have the prior sanction of the relevant Chief Officer and must be recorded in the Hospitality Book kept by the Chief Executive's Secretary. There is a Protocol on Corruption, Gifts and Hospitality contained within the Staff Code of Conduct. The Hospitality Book is regularly reviewed by the Monitoring Officer, Head of Paid Service and s. 151 Officer.

## **10. Standards Committee and the Code**

Sevenoaks District Council's Code of Conduct is based on text published by the Department for Communities and Local Government (DCLG). Town and Parish Councils have adopted their own Codes based on the seven Nolan principles of Selflessness, integrity, objectivity, accountability, openness, honesty and leadership. The District Council encouraged Town and Parishes to adopt the Sevenoaks District Council Code, although it is known that some have adopted the National Association of Local Council's model.

The Standards Committee is an ordinary committee of the Council which means that it is subject to the usual requirements relating to access to information and political balance.

## **11. Complaints against Members**

The current Standards Regime, set up under the Localism Act 2011, was implemented by this Council in July 2012. This provides a mechanism for receiving and processing complaints against Members.

Under the Localism Act 2011 authorities are not obliged to include provisions in their arrangements for Members to be able to appeal against findings that they have breached the Code of Conduct. In line with this, Sevenoaks District Council decided not to include appeal provisions in its arrangements (although for procedural irregularity a complaint can always be made to the Ombudsman).

The Localism Act 2011 makes no provision for sanctions against Members found to have breached the Code of Conduct. However, authorities are able to censure Members, to publicise breaches of the Code of Conduct, to arrange for a report to

Full Council and to recommend that Members be removed from positions on committees and outside bodies. This Council decided to include provisions for the Monitoring Officer to be instructed to arrange training for the Member and/or conciliation, if appropriate, which is a useful practical measure for improving Member conduct.

Seven formal complaints were received between January and December 2017. For comparison, there were four complaints between January and December 2016. Of the complaints during 2017, two failed the Initial Intake Test and two resulted in a decision to take no further action after assessment. One was referred for informal resolution and two are ongoing. It appears that although the Code of Conduct is well observed there is no apparent hindrance to those who wish to make a formal complaint about Member conduct.

The complaint in July 2017 related to Member conduct where the allegations were simple and not denied. The complainant considered that a breach of the Code had taken place while the Member was acting in an official and public capacity. The Monitoring Officer and Independent Person assessed the complaint and found that an investigation would serve no purpose, the Member having repeatedly apologised for conduct which was of a less serious nature.

The complaint in August 2017 related to Member conduct which clearly did not constitute a breach of the relevant Code.

The complaint in September 2017 involved an alleged breach which was well witnessed. The circumstances suggested that some remedial actions were necessary, although the breach was clearly not of the most serious nature. The matter related to alleged misconduct while making a speech at a Town Council meeting, culminating in a failure to respect the authority of the Mayor. This breached the Town Code of Conduct. The Monitoring Officer and Independent Person assessed the complaint and agreed that the Member concerned should be given a further and final opportunity to apologise to the Complainant and to give assurances that the conduct would not be repeated. The Independent Person made himself available to facilitate this process.

The fourth and sixth complaints of the year are ongoing and accordingly should not be discussed. The fifth and seventh failed the initial intake test and accordingly did not proceed.

It is the opinion of the Monitoring Officer that the system for Code of Conduct complaints is working extremely well and that there is accordingly no need at the present time to revise Appendix S of the Constitution. However, a report on this matter has been presented to the Standards Committee at the Committee's request.

Under the existing system, the Monitoring Officer first carries out an 'initial intake test' to determine whether the complaint can be processed.

If it passes that test, it will thereafter be assessed and the Monitoring Officer will take no further action, attempt informal resolution or recommend formal investigation. In the latter case, if the investigation concludes that there is

evidence of failure to comply with the Code of Conduct, the Monitoring Officer (having consulted the Independent Person) will either seek informal resolution or refer the matter to the Standards Hearing Sub Committee.

Please see the below table for a breakdown of complaints received during 2017:

<b>Date made</b>	<b>Subject Member</b>	<b>Complainant</b>	<b>Date received</b>	<b>Assessed</b>	<b>Result</b>
10/07/17	District Councillor	Public	10/07/16	24/07/17	No further action.
30/08/17	Town Councillor	Public	30/08/17	18/10/17	No further action.
26/09/17	Town Councillor	Town Councillor	26/09/17	30/10/17	Informal resolution.
17/10/17	Town Councillor	Town Councillor	17/10/17	Not yet assessed.	Not yet assessed.
21/11/17	Town Councillor	Parish Councillor	21/11/17		Failed initial intake test.
7/12/17	Town Councillor	Town Councillor	7/12/17	Not yet assessed.	Not yet assessed.
Not dated	Town Councillor	Public	18/12/17		Failed initial intake test.

## **12. Support to Councillors, Cabinet, Scrutiny and Committee Meetings**

The distribution and publication of committee reports, agendas and decisions is central to meeting the requirements of a key deliverable. It is the Monitoring Officer's responsibility to oversee the process and ensure that these documents comply with statutory and constitutional requirements. He also oversees the annual reporting to the Audit Committee of the proper working of the Members' Allowance Scheme.

Ensuring compliance with the committee process includes:

- Distributing and publishing all agendas within five clear working days of the meeting taking place and ensuring that all agendas are compliant with the



access to information rules and exempt information is marked up accordingly.

- Advertising public meetings five clear days before the meeting date.
- Ensuring that papers are made available to the public.
- Drafting minutes for publication within nine working days.
- Publishing a record of all decisions including key decisions taken by Cabinet within 48 hours (2 working days) of the meeting.
- Ensuring that petitions are handled in accordance with the Council’s Constitution including e-petitioning.
- Ensuring that meetings are accessible.
- Complying with the requirements of The Local Authorities (Executive Arrangements) (Meetings and Access to Information) (England) Regulations 2012.
- The Openness of Local Government Bodies Regulations 2014
- Attendance at Cabinet and Council.

One of the explicit aims of the Council has been to try and streamline the decision making process to allow Council to focus on service delivery. The following is the statutory meetings analysis, covering meetings which were serviced between 1 January 2017 and 31 December 2017:

Full Council Meetings (including 1 annual meeting)	5
Cabinet	12
Audit Committee	4
Development Control Committee	14
Direct and Trading Advisory Committee	4
Economic and Community Development Advisory Committee	4
Finance Advisory Committee	5
Governance Committee	3

Health Liaison Board	3
Housing & Health Advisory Committee	3
Legal & Democratic Advisory Committee	4
Licensing Committee	2
Planning Advisory Committee	6
Policy & Performance Advisory Committee	4
Scrutiny Committee	4
Sevenoaks Joint Transportation Board	4
Standards Committee	2

The volume of meetings represents a substantial commitment of both Councillors' and Officers' time and resources. It is of great importance that meetings constitute an effective use of time and resources; that they add value to corporate effectiveness and help in meeting the aims and objectives of the Constitution and the Community Plan and Corporate Plan.

The requirements for notice of Key Decisions set out in the Local Authorities (Executive Arrangements) (Meetings and Access to Information) (England) Regulations 2012 are being followed to the satisfaction of the Monitoring Officer. There were no call-in requests during 2017.

The Council is required by Law to discharge certain scrutiny functions and this function is fulfilled to the satisfaction of the Monitoring Officer by the Scrutiny Committee.

### **13. The Transparency Code**

The Council has been under a duty to publish a range of data under the Local Government Transparency Code and associated Regulations since 2014.

It is the Government's stated desire to place more power into citizens' hands to increase democratic accountability and make it easier for local people to contribute to the local decision making process and help shape public services. The Code has been issued to meet this desire. The Government has set out that "Transparency is the foundation of local accountability and the key that gives people the tools and information they need to enable them to play a bigger role in society. The availability of data can also open new markets for local business, the voluntary and community sectors and social enterprises to run services or manage public assets".

The Government published a revised and updated Code in 2015 and the Council remains committed to carrying forward the enhanced requirements of the new Transparency Code. The development of a new Council website, which will shortly go live, is aimed to provide improved access to Council information, including data sets required to be published by Government.

#### **14. Member Training and Development**

Members received training on a number of matters during the calendar year, including vital training on planning enforcement, development control and making defensible planning decisions. Throughout the year they have been kept up-to-date with developments relating to the Local Plan. Compulsory Licensing training is provided to Members on an annual basis and upon election all Members are provided with induction training.

Knowledge of the budget process is of great importance and the Chief Finance Officer provided a refresher session on budget setting in September.

The Legal and Democratic Services Advisory Committee has agreed a programme of Member training following a survey of all Members. This will be rolled out in 2018 and will include training on compliance with the General Data Protection Regulation, which comes into force on 25 May 2018. All Member training will be taking place on the same evening as a committee meeting.

#### **15. Joint Independent Remuneration Panel**

During the year the Joint Independent Remuneration Panel furnished the Governance Committee with its report on Member Allowances. The significant work done by the Panel was welcomed by Council, which referred the report back to a working group for consideration. Members agreed in November to accept the recommendations of the Joint Independent Remuneration Panel, with some amendments. The bulk of changes will take place following the next District elections in 2019.

#### **16. Whistle Blowing**

Sevenoaks Council is committed to having effective whistleblowing arrangements in order to safeguard individuals who have genuine cause for raising concerns in the work place and to promote good governance and safeguard the public interest.

The Council's Whistle Blowing Policy sets out how to raise concerns within the organisation and is designed to give statutory protection to employees who "blow the whistle" on their employer's malpractice. In addition, the Council aims to mitigate the risk of inappropriate behaviour by those undertaking work on behalf of the Council and the Council refers to this Policy in contracts with suppliers and service providers, in the Procurement Guide and in its partnership arrangements.

The Council takes seriously and will investigate all reports of improper activities. The Policy aims to ensure that when concerns are raised, the Council will address the concerns and protect the person raising the concern.

The Council is committed to the highest possible standards of openness, probity and accountability and in line with this commitment the Council reviewed and updated its Whistleblowing Policy two years ago to incorporate the requirements of the new Statutory Code of Practice recommended by the Whistleblowing Commission. The Whistleblowing Policy is subject to annual review by the Audit Committee with the review taking into consideration the views of users of the Policy and any relevant professional or regulatory changes.

The new Code of Practice makes whistleblowing more effective within organisations and provides practical guidance to employers, workers and their representatives and sets out recommendations for raising, handling, training and reviewing whistleblowing in the work place.

In the last calendar year no concerns have been raised under the Council's current whistleblowing policy.

#### **17. Regulation of Investigatory Powers Act**

The Regulation of Investigatory Powers Act 2000 (RIPA) introduced a statutory framework for those carrying out surveillance as part of an investigation. The Protection of Freedoms Act 2012 (2012 Act) amended RIPA to provide additional controls. The internal authorisation process is now followed by external authorisation from a Justice of the Peace.

In practice the District Council seeks to carry out surveillance activity by overt means whereby it is not necessary to engage the provisions of RIPA.

On 4 April 2017 the Right Hon Lord Judge, Chief Surveillance Commissioner wrote to the Council enclosing the Inspection Report of the Office of the Surveillance Commissioners. His inspection report is appended to this report. The report was positive although it did recommend minor textual amendments and officer refresher training, which is of course to be provided.

#### **18. Code of Corporate Governance**

During the year the Monitoring Officer reported to the Audit Committee that the Code of Corporate Governance should be updated in line with a new framework. The report of the Monitoring Officer was well received by the Committee, although it should be noted that the changes proposed were not of a fundamental nature despite being necessary. The Monitoring Officer continued during 2017 to consider and review implementation of good governance and is happy to report no difficulties during the year.

#### **19. Conclusion**

The key legal provisions and challenges facing the Council remain the same. There is a need for the Monitoring Officer to carry out both a proactive and reactive role in conjunction with the Standards Committee. This involves raising standards, encouraging ethical behaviour, adopting good governance and promoting robust procedures.

**Appendix**

The Monitoring Officer has a reactive enforcement role and together with the Standards Committee's it is his job to enforce the Code of Conduct and relevant sections of the Localism Act 2011. As can be seen from the above, there are few reports of misconduct amongst Members and very few of any substance. Nevertheless, this is not cause of complacency and at all times it is necessary to be vigilant and active in safeguarding the reputation and legality of the Council.

The Monitoring Officer's Report sets out the elements of good governance and demonstrates that robust procedures are in place to raise ethical standards, identify problems and ensure that Members, Officers and the Public are aware of appropriate channels to raise concerns.

Martin Goodman  
Monitoring Officer

**Attached:**

Local Government and Social Care Ombudsman Annual Review Letter

Office of Surveillance Commissioners Inspection Report

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20 July 2017

*By email*

Pav Ramewal  
Chief Executive  
Sevenoaks District Council

Dear Pav Ramewal,

### **Annual Review letter 2017**

I write to you with our annual summary of statistics on the complaints made to the Local Government and Social Care Ombudsman (LGO) about your authority for the year ended 31 March 2017. The enclosed tables present the number of complaints and enquiries received about your authority and the decisions we made during the period. I hope this information will prove helpful in assessing your authority's performance in handling complaints.

The reporting year saw the retirement of Dr Jane Martin after completing her seven year tenure as Local Government Ombudsman. I was delighted to be appointed to the role of Ombudsman in January and look forward to working with you and colleagues across the local government sector in my new role.

You may notice the inclusion of the '*Social Care Ombudsman*' in our name and logo. You will be aware that since 2010 we have operated with jurisdiction over all registered adult social care providers, able to investigate complaints about care funded and arranged privately. The change is in response to frequent feedback from care providers who tell us that our current name is a real barrier to recognition within the social care sector. We hope this change will help to give this part of our jurisdiction the profile it deserves.

### **Complaint statistics**

Last year, we provided for the first time statistics on how the complaints we upheld against your authority were remedied. This year's letter, again, includes a breakdown of upheld complaints to show how they were remedied. This includes the number of cases where our recommendations remedied the fault and the number of cases where we decided your authority had offered a satisfactory remedy during the local complaints process. In these latter cases we provide reassurance that your authority had satisfactorily attempted to resolve the complaint before the person came to us.

We have chosen not to include a 'compliance rate' this year; this indicated a council's compliance with our recommendations to remedy a fault. From April 2016, we established a new mechanism for ensuring the recommendations we make to councils are implemented, where they are agreed to. This has meant the recommendations we make are more specific, and will often include a time-frame for completion. We will then follow up with a council and seek evidence that recommendations have been implemented. As a result of this new process, we plan to report a more sophisticated suite of information about compliance and service improvement in the future.

This is likely to be just one of several changes we will make to our annual letters and the way we present our data to you in the future. We surveyed councils earlier in the year to find out, amongst other things, how they use the data in annual letters and what data is the most useful; thank you to those officers who responded. The feedback will inform new work to

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provide you, your officers and elected members, and members of the public, with more meaningful data that allows for more effective scrutiny and easier comparison with other councils. We will keep in touch with you as this work progresses.

I want to emphasise that the statistics in this letter comprise the data we hold, and may not necessarily align with the data your authority holds. For example, our numbers include enquiries from people we signpost back to the authority, but who may never contact you.

In line with usual practice, we are publishing our annual data for all authorities on our website. The aim of this is to be transparent and provide information that aids the scrutiny of local services.

### **The statutory duty to report Ombudsman findings and recommendations**

As you will no doubt be aware, there is duty under section 5(2) of the Local Government and Housing Act 1989 for your Monitoring Officer to prepare a formal report to the council where it appears that the authority, or any part of it, has acted or is likely to act in such a manner as to constitute maladministration or service failure, and where the LGO has conducted an investigation in relation to the matter.

This requirement applies to all Ombudsman complaint decisions, not just those that result in a public report. It is therefore a significant statutory duty that is triggered in most authorities every year following findings of fault by my office. I have received several enquiries from authorities to ask how I expect this duty to be discharged. I thought it would therefore be useful for me to take this opportunity to comment on this responsibility.

I am conscious that authorities have adopted different approaches to respond proportionately to the issues raised in different Ombudsman investigations in a way that best reflects their own local circumstances. I am comfortable with, and supportive of, a flexible approach to how this duty is discharged. I do not seek to impose a proscriptive approach, as long as the Parliamentary intent is fulfilled in some meaningful way and the authority's performance in relation to Ombudsman investigations is properly communicated to elected members.

As a general guide I would suggest:

- Where my office has made findings of maladministration/fault in regard to routine mistakes and service failures, and the authority has agreed to remedy the complaint by implementing the recommendations made following an investigation, I feel that the duty is satisfactorily discharged if the Monitoring Officer makes a periodic report to the council summarising the findings on all upheld complaints over a specific period. In a small authority this may be adequately addressed through an annual report on complaints to members, for example.
- Where an investigation has wider implications for council policy or exposes a more significant finding of maladministration, perhaps because of the scale of the fault or injustice, or the number of people affected, I would expect the Monitoring Officer to consider whether the implications of that investigation should be individually reported to members.
- In the unlikely event that an authority is minded not to comply with my recommendations following a finding of maladministration, I would always expect the Monitoring Officer to report this to members under section five of the Act. This is an exceptional and unusual course of action for any authority to take and should be considered at the highest tier of the authority.



The duties set out above in relation to the Local Government and Housing Act 1989 are in addition to, not instead of, the pre-existing duties placed on all authorities in relation to Ombudsman reports under The Local Government Act 1974. Under those provisions, whenever my office issues a formal, public report to your authority you are obliged to lay that report before the council for consideration and respond within three months setting out the action that you have taken, or propose to take, in response to the report.

I know that most local authorities are familiar with these arrangements, but I happy to discuss this further with you or your Monitoring Officer if there is any doubt about how to discharge these duties in future.

### **Manual for Councils**

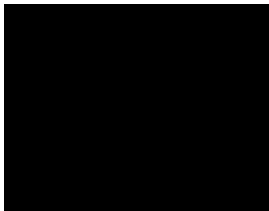
We greatly value our relationships with council Complaints Officers, our single contact points at each authority. To support them in their roles, we have published a Manual for Councils, setting out in detail what we do and how we investigate the complaints we receive. When we surveyed Complaints Officers, we were pleased to hear that 73% reported they have found the manual useful.

The manual is a practical resource and reference point for all council staff, not just those working directly with us, and I encourage you to share it widely within your organisation. The manual can be found on our website [www.lgo.org.uk/link-officers](http://www.lgo.org.uk/link-officers)

### **Complaint handling training**

Our training programme is one of the ways we use the outcomes of complaints to promote wider service improvements and learning. We delivered an ambitious programme of 75 courses during the year, training over 800 council staff and more 400 care provider staff. Post-course surveys showed a 92% increase in delegates' confidence in dealing with complaints. To find out more visit [www.lgo.org.uk/training](http://www.lgo.org.uk/training)

Yours sincerely



Michael King  
Local Government and Social Care Ombudsman for England  
Chair, Commission for Local Administration in England

For further information on how to interpret our statistics, please visit our website:  
<http://www.lgo.org.uk/information-centre/reports/annual-review-reports/interpreting-local-authority-statistics>

## Complaints and enquiries received

Adult Care Services	Benefits and Tax	Corporate and Other Services	Education and Children's Services	Environment Services	Highways and Transport	Housing	Planning and Development	Other	Total
1	2	2	0	0	1	1	4	0	11

## Decisions made

				Detailed Investigations			
Incomplete or Invalid	Advice Given	Referred back for Local Resolution	Closed After Initial Enquiries	Not Upheld	Upheld	Uphold Rate	Total
0	0	6	4	3	0	0%	13

### Notes

Our uphold rate is calculated in relation to the total number of detailed investigations.  
 The number of remedied complaints may not equal the number of upheld complaints. This is because, while we may uphold a complaint because we find fault, we may not always find grounds to say that fault caused injustice that ought to be remedied.

### Complaints Remedied

by LGO	Satisfactorily by Authority before LGO Involvement
0	0



Chief  
Surveillance  
Commissioner

**Official -Sensitive**

**4 April 2017**

**OSC Inspection**

Dear *Chief Executive,*

I enclose a copy of the report dated 6 March 2017 prepared by Mrs Grainne Athorn, Surveillance Inspector, following her inspection of the arrangements made by the Council to secure compliance with the statutory provisions which govern the use of covert surveillance. The report was prepared on an analysis of the material provided by Mr Carrington-West and without a personal visit to the Council. If having considered the report, and this letter, you conclude that a personal visit would be appropriate, the necessary arrangements will be made.

I have studied the report and endorse it.

It is now nearly four years since the last inspection. The recommendations made at that time were addressed and can now be discharged. The Council has not exercised, nor sought to exercise its statutory powers for some years now, and this policy is likely to continue. Nevertheless, and subject to the remaining part of the letter, there appears to be a reasonable structure available for deployment if this were to change.

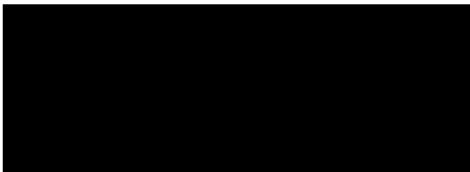
There are three recommendations this year. The first is a matter of detail relating to urgent oral authorisations in the Policy document, which is no longer appropriate as it has been overtaken by further legislation. The remaining recommendations are required to bring the current arrangements up-to-date both by reference to refresher training, which should be seen as an ongoing ingredient of a well structured system, and by highlighting the need for guidance and training to Council officers about the use of social media sites and Internet research for investigative purposes. The difficulty in this particular context is that without appropriate guidance and training Council officers, acting in good faith may, as Mrs Athorn explains, drift into surveillance falling within the protective ambit of the legislation, and thus be acting unlawfully.

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Provided these recommendations are accepted, and action taken to implement them the arrangements should be adequate to deal with the limited use of the statutory powers which is currently envisaged. Indeed the greatest potential threat is the risk of inadvertent, but unlawful investigations, in the way described in the report.

I look forward to hearing that the recommendations are accepted and that appropriate action will be taken.

Yours sincerely,



Pav Ramewal Esq  
Chief Executive  
Sevenoaks District Council  
Argyle Road  
Sevenoaks  
Kent TM13 1HG



**OFFICE OF SURVEILLANCE COMMISSIONERS**  
**INSPECTION REPORT**

**Sevenoaks District Council**

**Monday 6<sup>th</sup> March 2017**

**Surveillance Inspector:**

**Mrs Grainne Athorn**

**OFFICIAL - SENSITIVE**

**DISCLAIMER**

This report contains the observations and recommendations identified by an individual surveillance inspector, or team of surveillance inspectors, during an inspection of the specified public authority conducted on behalf of the Chief Surveillance Commissioner.

The inspection was limited by time and could only sample a small proportion of covert activity in order to make a subjective assessment of compliance. Failure to raise issues in this report should not automatically be construed as endorsement of the unreported practices.

The advice and guidance provided by the inspector(s) during the inspection could only reflect the inspectors' subjective opinion and does not constitute an endorsed judicial interpretation of the legislation. Fundamental changes to practices or procedures should not be implemented unless and until the recommendations in this report are endorsed by the Chief Surveillance Commissioner.

The report is sent only to the recipient of the Chief Surveillance Commissioner's letter (normally the Chief Officer of the authority inspected). Copies of the report, or extracts of it, may be distributed at the recipient's discretion but the version received under the covering letter should remain intact as the master version.

The Office of Surveillance Commissioners is not a public body listed under the Freedom of Information Act 2000, however, requests for the disclosure of the report, or any part of it, or any distribution of the report beyond the recipients own authority is permissible at the discretion of the Chief Officer of the relevant public authority without the permission of the Chief Surveillance Commissioner. Any references to the report, or extracts from it, must be placed in the correct context.

**OFFICIAL - SENSITIVE**

**OSC INSP/075**

The Rt. Hon. Lord Judge  
Chief Surveillance Commissioner  
Office of Surveillance Commissioners  
PO Box 29105  
London SW1V 1ZU

6<sup>th</sup> March 2017

**OSC INSPECTION – SEVENOAKS DISTRICT COUNCIL****1 Date of Inspection**

A desktop review of Sevenoaks District Council was undertaken on Monday the 6<sup>th</sup> March 2017.

**2 Inspector**

Mrs Gráinne Athorn.

**3 Introduction**

3.1 Sevenoaks District Council serves a population of approximately 114,000 (as of 2011) and covers the westernmost part of Kent in England. To the North West the district borders with two Greater London Boroughs (Bromley and Bexley) in Swanley, as well as Surrey to the West near Westerham and East Sussex to the South near Edenbridge.

3.2 The Chief Executive is Mr Pav Ramewal who is supported by Senior Responsible Officer Jim Carrington-West, Chief Officer Corporate Services. General responsibility for compliance with the Regulation of Investigatory Powers Act 2000 falls with Martin Goodman, Head of Legal and Democratic Services.

3.3 The address for correspondence is Sevenoaks District Council, Council Offices, Argyle Road, Sevenoaks, Kent TN13 1HG.

**4 Inspection Approach**

4.1 The last inspection was undertaken by Mr Kevin Davis during June 2013, since then no RIPA activity has been undertaken. As a consequence, this report has been prepared without visiting Sevenoaks District Council. To assess its ongoing compliance I have reviewed information provided by its RIPA Lead/SRO and the associated Surveillance Policy.

**5 Actions Taken on Past Recommendations**

5.1 Mr Davis's inspection report of 2013 made three recommendations.



- 5.2 The Council ensure that the Code of Practice paragraph 3.30 is complied with as a matter of urgency.

*To provide context, this comment related to the requirement for Council Elected Members relating to the use of these powers quarterly.*

Members reviewed the recommendations arising from the last inspection during October of 2013, and since then have been updated on the use of surveillance powers and the associated policy as part of the Monitoring Officer's report to the Standards Committee and Council during both 2014 and 2015. As mentioned previously, surveillance powers have not been used since the last inspection. I suggest it would be good practice to continue this activity in the future to ensure the council is ready and able to use its powers should it become necessary.

**Recommendation Discharged**

- 5.3 The Council ensure that the extant recommendation of 2010 with regard to training is acted upon without delay.

*Specifically no training had been provided to senior officials including Authorising Officers and staff with responsibility for the compliance of key services such as CCTV. This recommendation had been extant since the inspection prior to that by Mr Davis, performed by HH Norman Jones, QC.*

Extensive training was provided soon after the last inspection which included the three nominated Authorising Officers, the present Chief Executive, the SRO and a further 22 key staff. It is helpful that this training was delivered so soon after the last inspection, and I note that many of the trained senior personnel remain in post.

**Recommendation Discharged**

- 5.4 That future training encompasses the issues identified in paragraphs 16 and 18 of this report.

*Upon reviewing the last surveillance application Mr Davis commented that it had failed to provide information relating to the provenance of intelligence and the period of duration was incorrect.*

The training provided detailed above covered these elements of compliance as well as other key themes of RIPA.

**Recommendation Discharged**

**6 Review of Policies and Procedures**

- 6.1 The Surveillance Policy provides a focal point for Council staff seeking guidance as to Sevenoaks' RIPA compliance structure. It is succinct and easy to read and contains broad definitions of surveillance and CHIS. There are currently three trained AOs who are instructed by the policy not to authorise activity falling within their own areas of



responsibility. The policy also identifies the requirement for surveillance applicants to receive training before making a request for authorisation.

- 6.2 The policy makes frequent reference to arrangements for urgent oral authorisations. The power to grant urgent oral authorisations as detailed within section 43(1)(a) of the Regulation of Investigatory Powers Act 2000 was removed from organisations that require judicial approval for their authorisations, of which Sevenoaks DC is one. **Recommendation: All references to Urgent Oral Authorisations should be removed from the present Surveillance Policy.**
- 6.3 When detailing arrangements for the management of CHIS the policy also states the requirement for 'an assessment of the risk to the source in carrying out the proposed conduct', this should also explicitly detail the likely consequences should the role of the source as an informant become known (see paragraph 6.14 Covert Human Intelligence Source Code of Practice).
- 6.4 The section of the Policy referencing examples of when a surveillance authorisation may be required is helpful but could benefit from minor redrafting. Specifically, it refers to types of offences that may be investigated using surveillance powers; to illuminate this further it may be useful to refer to the crime thresholds referred to in The Protection of Freedoms Act 2012 (Part III of the Home Office Guidance published in October 2012 is also helpful).

## 7 RIPA Awareness

- 7.1 Whilst Sevenoaks does not make use of the powers conferred upon it by RIPA it must continue to take steps to ensure that its staff have an awareness of its provisions and the basic requirements to consider when considering conducting covert surveillance. There is a risk that where such powers are not used, council officials might neglect to consider when their activity may inadvertently drift into that which may be considered to be covert surveillance. One area where this risk is most present is the monitoring of social media and open source material available on the internet.
- 7.2 **Recommendation: The Surveillance Policy requires updating to provide guidance to council staff as to how social media and/or open source research may be undertaken as part of the investigative process and the potential for such activity to amount to covert surveillance.** This advice need not be lengthy but should direct officers as to how to manage their online activity to ensure they do not inadvertently conduct covert surveillance online.

## 8 Reports to Members

- 8.1 An annual report to members is submitted by the Monitoring Officer and includes information regarding RIPA compliance and use. This report was submitted to members via the Standards Committee and Council in all years since the last inspection, with the exception of 2016. This practice should continue, if only to highlight the low use of available powers.

**9 Liaison with the Magistrates' Court**

- 9.1 Sevenoaks District Council has not requested any use of its surveillance powers since the last inspection in 2013 and made only one request in the period prior to that inspection. As such, establishing a relationship with the Magistrates' Court has not been necessary, although experience shows that advance preparations can help to smooth the process when such an occasion does arise.
- 9.2 Procedures relating to the submission of documentation to the court are detailed within the Surveillance Policy. This document makes reference to responsibility for arranging court visits residing with the Head of Legal and Democratic Services. I suggest that should a surveillance authorisation request be made to the court in the period following this inspection, the relevant Authorising Officer should also attend court, and that this practice be highlighted in the Surveillance Policy as best practice.

**10 Authorising Officers**

- 10.1 The Council has designated three senior staff as Authorising Officers, they are: Adrian Rowbotham, Chief Finance Officer; Richard Morris, Chief Planning Officer; and Richard Wilson, Chief Environment and Operational Services Officer, all of whom appear to be sufficiently senior to fulfil the requirements of SI 2010/521. All Authorising Officers received training in 2013 but are yet to exercise their powers.

**11 Training**

- 11.1 Training was provided by an independent provider soon after the last inspection in 2013, and included the present Chief Executive, the SRO, Authorising Officers and other staff in key areas of the council including CCTV. Whilst the low usage of RIPA powers and pressures placed upon local authority finances is acknowledged, the absence of further training since then is marked, and I recommend that refresher training is undertaken, at the very least by the nominated AOs on perhaps an annual basis. This need not be expensive and could be suitably provided by the in house legal team or in partnership with neighbouring councils to keep costs down. Many councils find the idea of a "table top exercise" a helpful practice.

**Recommendation: The Council should ensure that regular refresher training is provided to key officers to ensure, even in the absence of actual use of the powers available, they remain "match fit".**

**12 CCTV and Technical Equipment**

- 12.1 Sevenoaks Council does not retain any equipment used for the sole purpose of conducting directed surveillance. There is however, a CCTV system which is owned and operated by the council. To facilitate the running of this unit a CCTV code of practice is in place as well as a signed partnership agreement with key partners Kent Police. The Surveillance Policy makes reference to the use of this system for the purpose of covert surveillance and references the requirement for an extant directed surveillance authorisation should this be necessary.

**13 Conclusions**

- 13.1 Sevenoaks District Council has not made use of its surveillance or CHIS powers in the period since the last inspection, however a comprehensive Surveillance Policy remains in place to govern such activity if it becomes necessary.
- 13.2 Some minor amendments to the Surveillance Policy are required, including the need to highlight how social media and open source monitoring tools may be used as part of covert surveillance activity. These amendments should be made once Council Legal Officers have had the opportunity to review the forthcoming publication of the amended Covert Surveillance Code of Practice<sup>1</sup> which is expected to address these issues in more detail.
- 13.3 The absence of authorisation documentation generated since the last inspection means that it is not possible to comment upon the quality of authorisations, however should one be required there appears sufficient guidance available to enable it to be completed to a good standard, although the need for ongoing training for applicants and Authorising Officers is a key insurance measure.

**14 Recommendations**

- 14.1 All references to Urgent Oral Authorisations should be removed from the present Surveillance Policy.
- 14.2 The Surveillance Policy requires updating to provide guidance to council staff as to how social media and/or open source research may be undertaken as part of the investigative process and the potential for such activity to amount to covert surveillance.
- 14.3 The Council should ensure that regular refresher training is provided to key officers to ensure, even in the absence of actual use of the powers available, they remain "match fit".

Gráinne Athorn  
Surveillance Inspector

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<sup>1</sup> Revised Home Office Codes are due to be issued later in 2017 to take into account the passing of the Investigatory Powers Act 2016.

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## ARRANGEMENTS FOR DEALING WITH CODE OF CONDUCT COMPLAINTS

Standards Committee - 15 January 2018

Report of                      Monitoring Officer

Status                         For consideration

Key Decision                No

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**Executive Summary:** This report sets out in summary the arrangements for dealing with Code of Conduct Complaints.

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**This report supports the Key Aim of effective management of Council resources.**

**Contact Officer**        Martin Goodman - Monitoring Officer, Ext. 7245

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**Recommendation to the Standards Committee:** That the report be noted.

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**Reason for recommendation:** This report was written at the request of the Committee.

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### Introduction and Background

- 1        The Standards Committee maintains oversight of the District Council's constitutional Arrangements for dealing with Code of Conduct complaints ('the Arrangements'). The Terms of Reference of the Committee allow it to review the Arrangements.
- 2        Part 1 of the Constitution makes clear that except for changes required by statute, changes to the Constitution will only be approved by the full Council after consideration of the proposal by the Governance Committee. This means that the Standards Committee may not itself change the Arrangements.
- 3        A Member Working Group has considered amending the arrangements for Standards Complaints and its findings will be reported to the meeting.

### Existing Constitutional Provisions

- 4        The Arrangements are set out in the Constitution at Appendix S, which is supported by four annexes. Those documents are appended to this report.
- 5        As Members will see, the Monitoring Officer is appointed as the Proper Officer to receive complaints of failure to comply with the Code of Conduct. The Monitoring Officer, in consultation with the Independent Person, has

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authority to determine whether a complaint merits formal investigation and to arrange such investigation. The provisions set out that the Monitoring Officer will seek resolution of complaints without formal investigation wherever practicable. Where an investigation finds no evidence of failure to comply with the Code of Conduct, the Monitoring Officer is instructed to close the matter.

- 6 Where the investigation finds evidence of a failure to comply with the Code of Conduct, the Monitoring Officer in consultation with the Independent Person is authorised to seek local resolution to the satisfaction of the complainant in appropriate cases, with a summary report for information to the Standards Committee. Where such local resolution is not appropriate or not possible, the Monitoring Officer will report the investigation findings to a Standards Hearings Sub Committee for local hearing.
- 7 Members will see from the attachments that the Arrangements provide for an Initial Intake test. If the complaint fails the Initial Intake Test it will not be considered further. A complaint which passes the Initial Intake test will be subjected to the Assessment Test in consultation with the Independent Person. Exceptionally, the complaint may be referred to the Standards Assessment Working Party if it accords with certain criteria relating to seriousness or sensitivity. The purpose of the Assessment Test (or the Standards Assessment Working Party) is to decide whether an attempt will be made at informal resolution, whether no further action should be taken or the whether the matter should proceed to formal investigation.
- 8 If the matter is referred to investigation, the Investigating Officer will be appointed by the Monitoring Officer. The investigation will be for fact finding purposes only. 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 seek informal resolution or refer the matter for consideration by the Standards Hearing Sub Committee in accordance with the relevant procedure detailed in Appendix S Annexe 3.
- 9 The Arrangements in Annex 3 set out provisions for deliberations on alleged breaches of the Code of Conduct and the imposition of sanctions, if any. Members will be aware that possible sanctions are limited and could involve the publication of findings, making recommendations that the Member be removed from committees or portfolios, arranging training and/or conciliation or recommending removal from outside appointments.

### Proposals

- 10 The complaints procedure has worked well in the opinion of successive Monitoring Officers and there is no proposal from the Monitoring Officer to make any changes. Nevertheless, should any changes be suggested by the Member Working Group, or by the Standards Committee itself, these would have to be considered by Governance Committee before any changes to the Constitution were made. To that end, the Monitoring Officer's recommendation in this report is that the report be noted. However, if



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## **APPENDIX S:**

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

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

#### **Sanctions**

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

#### Sanctions for Sevenoaks District Council Members:

- Reporting its findings to Council for information and publishing findings on the District Council's website;

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

### Sanctions for Town and Parish Council Members:

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

### The Election Period

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

## 2 Context

- 2.1 These "Arrangements" set out how anyone may make a complaint that an elected or Co-opted Member of Sevenoaks District Council *or of a town/parish council within its area* has failed to comply with the authority's Code of Conduct, and sets out how Sevenoaks District Council will deal with allegations of a failure to comply with the authority's Code of Conduct.
- 2.2 Under Section 28(6) and (7) of the Localism Act 2011, the Council must have in place "arrangements" under which allegations that a Member or Co-opted Member of the authority *or of a town/parish council within the authority's area*, or of a Committee or Sub-Committee of the authority, has failed to comply with that authority's Code of Conduct can be investigated and decisions made on such allegations.
- 2.3 Such arrangements must provide for the authority to appoint at least one Independent Person, whose views must be sought by the authority before it takes a decision on an allegation which it has decided shall be

investigated, and whose views can be sought by the authority at any other stage, or by a Member or *Co-opted Member of a town/parish council* against whom an allegation as been made.

### 3 The Code of Conduct

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

### 4 Making a complaint

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

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

Or –

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

- 4.2 The Monitoring Officer is a senior officer of the authority who has statutory responsibility for maintaining the Register of Members' Interests and who is responsible for administering the system in respect of complaints of Member or Co-opted Member misconduct.
- 4.3 In order to ensure that we have all the information which we need to be able to process a complaint, a complainant will need to complete and send us the Complaint Form, set out at Annexe 4 to these arrangements, which can be downloaded from the Sevenoaks District Council's website and is available on request from Reception at the District Council Offices.
- 4.4 The complainant will need to provide us with details of their name and a contact address or email address, so that we can acknowledge receipt of the complaint. The authority does not normally investigate anonymous complaints, unless there is a clear public interest in doing so.
- 4.5 The Monitoring Officer will acknowledge receipt of the complaint promptly after receiving it. The Monitoring Officer will send the Subject Member a copy of the complaint and all supporting evidence in order that the Subject Member can reply to the complaint. The Monitoring Officer will notify the complainant and Subject Member of any decision taken upon it.

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- 4.6 The Monitoring Officer will validate the complaint by subjecting it to the Initial Intake test and Assessment test set out in Annexe 1 to these arrangements. If the complaint fails the Initial Intake test it will not be considered further and the complainant and the Subject Member will be informed of this. The relevant Clerk will be informed of a complaint relating to a Town or Parish Councillor when a complaint passes the Initial Intake Test. If the complaint fails the subsequent Assessment test it will not be considered further and the complainant and the Subject Member will be informed of this.
- 4.7 If the complaint appears to the Monitoring Officer not to be a substantive allegation of misconduct under the Code of Conduct, the Monitoring Officer will so inform the complainant but may ensure where appropriate that the matter is dealt with under a more relevant procedure, eg: if it is a complaint about a service or an officer or a statement of policy disagreement.
- 4.8 If the complaint appears to the Monitoring Officer to be an allegation that could constitute a criminal offence, the Monitoring Officer will advise the complainant to refer the complaint to the police in the first instance. (Section 34 of the Localism Act 2011).
- 4.9 Where the complaint does appear to be an allegation of misconduct under the code, the Monitoring Officer (as well as acknowledging the complaint) will notify the Subject Member of receipt of the complaint and give the Subject Member a right to respond to the complaint. The Subject Member will normally be given up to 30 working days to comment on the complaint and provide any evidence of their own.
- 4.10 As part of this process the Monitoring Officer may try to reach an informal resolution of your complaint, with the complainant and the Subject Member concerned.
- 5 Will the complaint be investigated?**
- 5.1 The Monitoring Officer will review every complaint passing the Initial Intake test and the Assessment test and, after consultation with an Independent Person, take a decision as to whether it merits formal investigation. This review will be carried out in conjunction with the Assessment decision factors set out in Annexe 1 of these arrangements and take into account the statements and evidence of both the complainant and the Subject Member in any response given. This decision will normally be taken within 40 working days of receipt of full information in relation to the complaint. Where the Monitoring Officer has taken a decision, they will inform the complainant and the Subject Member of the decision and the reasons for that decision.
- 5.2 The Monitoring Officer may refer certain cases to the Standards Assessment Working Party in accordance with the Criteria entitled "Criteria for referral to the Standards Assessment Working Party" set out within

Annexe 1 for advice and guidance and to make recommendation as to the decision to be taken.

- 5.3 Where the Monitoring Officer requires additional information in order to come to a decision, the Standards Assessment Working Party may require the Monitoring Officer to go back to the complainant for such information, and will instruct the Monitoring Officer to request information from the Subject Member.
- 5.4 In appropriate cases, the Monitoring Officer may seek to resolve the complaint informally, without the need for a formal investigation. Such informal resolution may involve the Subject Member accepting that his/her conduct was unacceptable and offering an apology, or other remedial action by the authority. Where the Subject Member makes a reasonable offer of local resolution, the Monitoring Officer will take account of this in deciding whether the complaint merits formal investigation.

### **6 How is the investigation conducted?**

- 6.1 The Council has adopted a procedure for the investigation of misconduct complaints, which is attached as Annexe 2 to these arrangements.
- 6.2 The process is designed to be proportionate to the nature and seriousness of the case. This may involve little more than an exchange of letters or written representations in some cases.
- 6.3 If the Monitoring Officer decides that a complaint merits formal investigation, an Investigating Officer may be appointed by the Monitoring Officer, who may be another senior officer of the authority, an officer of another authority or an external investigator. The Investigating Officer will decide whether they need to meet or speak to the complainant to understand the nature of the complaint and enable the complainant to explain their understanding of events and suggest what documents the Investigating Officer needs to see, and who the Investigating Officer needs to interview.
- 6.4 The Investigating Officer would normally write to the Subject Member and provide them with a copy of the complaint, and ask the Subject Member to provide further explanation of events, and to identify what further documents are needed in addition to those contained in any initial “right of reply” response and who they need to interview.
- 6.5 At the end of the investigation, the Investigating Officer will produce a draft report and will send copies of that draft report, in confidence, to the complainant and to the Subject Member concerned, to give both an opportunity to identify any matter in that draft report which are disagreed with or which it is considered requires more consideration.

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6.6 Having received and taken account of any comments which are made on the draft report, the Investigating Officer will send the final report to the Monitoring Officer.

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

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

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

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

### Local Resolution

8.2 The Monitoring Officer may consider that the matter can reasonably be resolved without the need for a hearing. In such a case, the Monitoring Officer will consult with the Independent Person and with the complainant and seek to agree what is considered to be a fair resolution which also helps to ensure higher standards of conduct for the future. Such resolution may include the Subject Member accepting that their conduct was unacceptable and offering an apology, and/or other remedial action by the authority. If the Subject Member complies with the suggested resolution, the Monitoring Officer will report the matter to the Standards Committee *and the Town/Parish Council* for information, but will take no further action.

### Local Hearing

8.3 If the Monitoring Officer considers that local resolution is not appropriate, then the Monitoring Officer will report the Investigating Officer's report to the Standards Hearings Sub Committee which will conduct a local hearing before deciding whether the Subject Member has failed to comply with the Code of Conduct and, if so, whether to take any action in respect of the Subject Member.

8.4 The Council has agreed a procedure for local hearings, which is attached as Annexe 3 to these arrangements.

- 8.5 Essentially, the Monitoring Officer will conduct a “pre-hearing process”, requiring the Subject Member to give their response to the Investigating Officer’s report, in order to identify what is likely to be agreed and what is likely to be in contention at the hearing, and the Chair of the Standards Hearings Sub Committee may issue directions as to the manner in which the hearing will be conducted. At the hearing, the Investigating Officer will present their report, call such witnesses as they consider necessary and make representations to substantiate their conclusion that the Subject Member has failed to comply with the Code of Conduct. For this purpose, the Investigating Officer may ask the complainant to attend and give evidence to the Hearings Panel. The Subject Member will then have an opportunity to give his/her evidence, to call witnesses and to make representations to the Standards Hearings Sub Committee as to why they consider that they did not fail to comply with the Code of Conduct.
- 8.6 If the Standards Hearings Sub Committee, with the benefit of any advice from the Independent Person, concludes that the Subject Member did not fail to comply with the Code of Conduct the Standards Hearing Sub Committee can dismiss the complaint. If the Standards Hearings Sub Committee concludes that the Subject Member did fail to comply with the Code of Conduct, the Chair will inform the Subject Member of this finding and the Standards Hearings Sub Committee will then consider what action, if any, the Standards Hearings Sub Committee should take as a result of the Subject Member’s failure to comply with the Code of Conduct. In doing this, the Standards Hearings Sub Committee will give the Subject Member an opportunity to make representations to the Standards Hearings Sub Committee and will consult the Independent Person, but will then decide what action, if any, to take in respect of the matter.
- 9 What action can the Standards Hearings Sub Committee take where a Subject Member has failed to comply with the Code of Conduct?**
- 9.1 The Council has delegated to the Standards Hearings Sub Committee such of its powers to take action in respect of individual members as may be necessary to promote and maintain high standards of conduct. Accordingly the Standards Hearings Sub Committee may impose the sanctions as set out in paragraph 1.5 above.
- 9.2 The Standards Hearings Sub Committee has no power to suspend or disqualify the Subject Member or to withdraw allowances or expenses.
- 9.3 Any decision of the District Council on sanctions in relation to a Town/Parish Council can only in effect be a recommendation to the Parish Council, who must then itself decide whether to accept the recommendation. In the absence of express powers, a district could not, for example, remove a parish councillor from a committee. The district could only make a finding of breach/no breach and then recommend a course of action to the parish.
- 10 What happens at the end of the hearing?**

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- 10.1 At the end of the hearing, the Chair will state the decision of the Standards Hearings Sub Committee as to whether the Subject Member failed to comply with the Code of Conduct and as to any actions which the Standards Hearings Sub Committee resolves to take. Prior to reaching and announcing its decision in public, the Standards Hearings Sub Committee may retire to a separate room to deliberate in private. It cannot retire with either the Monitoring Officer or the Independent Person. The Monitoring Officer may be called by the Standards Hearings Sub Committee if they require technical or legal guidance but the nature of this must be disclosed in public.
- 10.2 As soon as reasonably practicable thereafter, the Monitoring Officer shall prepare a formal decision notice in consultation with the Chair of the Standards Hearings Sub Committee, and send a copy to the complainant, to the Subject Member *and to the Town/Parish Council*, and make that decision notice available for public inspection.

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

- 11.1 The Standards Hearings Sub Committee derives from the Council's Standards Committee and will consist of three Members drawn from the membership of the Standards Committee in accordance with the rules on political balance, if required.
- 11.2 The Independent Person is invited to attend all meetings of the Standards Hearings Sub Committee and their views are sought and taken into consideration before the Standards Hearings Sub Committee takes any decision on whether the Subject Member's conduct constitutes a failure to comply with the Code of conduct and as to any action to be taken following a finding of failure to comply with the Code of Conduct. The Independent Person otherwise takes no part in the discussions or deliberations of the Standards Hearings Sub Committee.

### 12 Who is the Independent Person?

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

A person cannot be "independent" if they –

- 12.1 Are, or have been within the past 5 years, a member, co-opted member or officer of the authority;
- 12.2 *Are or have been within the past 5 years, a member, co-opted member or officer of a town/parish council within the authority's area, or*
- 12.3 Are a relative, or close friend, of a person within paragraph 12.1 or 12.2 above. For this purpose, "relative" means –



- 12.3.1 Spouse or civil partner;
- 12.3.2 Living with the other person as husband and wife or as if they were civil partners;
- 12.3.3 Grandparent of the other person;
- 12.3.4 A lineal descendent of a grandparent of the other person;
- 12.3.5 A parent, sibling or child of a person within paragraphs 12.3.1 or 12.3.2;
- 12.3.6 A spouse or civil partner of a person within paragraphs 12.3.3, 12.3.4 or 12.3.5; or
- 12.3.7 Living with a person within paragraphs 12.3.3, 12.3.4 or 12.3.5 as husband and wife or as if they were civil partners.

**13 Revision of these arrangements**

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

**14 Appeals**

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

Annexe One	Initial test and Assessment Criteria
Annexe Two	Procedure for Investigations
Annexe Three	Procedure for Standards Hearings Sub Committee
Annexe Four	Complaint Form



## APPENDIX S: Annexe 1

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

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

Initial Intake test

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

	Tick box
It is a complaint against one or more named Members of Sevenoaks District Council or one or more named Members of one of the Parish/Town Councils within the Sevenoaks District Council area.	<input type="checkbox"/>
The Subject Member was a Member at the time of the alleged conduct.	<input type="checkbox"/>
The Member was acting in their official capacity. (If there is ambiguity the box should still be ticked and the matter assessed).	<input type="checkbox"/>
The behaviour took place within the last 30 days.	<input type="checkbox"/>
The complainant has given their name and address.	<input type="checkbox"/>
The complaint is not an allegation that could constitute a criminal offence (Section 34 of the Localism Act 2011)	<input type="checkbox"/>
The complaint is not being dealt with by the police, ombudsman or another complaint process (in this case the complaint will not be processed until after the other process has been completed).	<input type="checkbox"/>
The complaint is not being made within 6 weeks prior to an election where the Member subject to the complaint or the complainant is a candidate (no action will be taken in relation to such a complaint within this period)	<input type="checkbox"/>
The complaint is not the same or substantially similar to a complaint that has already been assessed even if this was prior to 1st July 2012.	<input type="checkbox"/>
The complaint is a substantive allegation under the Code rather than a service, officer or a statement of policy disagreement or a disagreement within another organisation, such as a political group (in this case the complainant may be directed to refer the complaint to another organisation).	<input type="checkbox"/>

If the complaint fails one or more of these tests it cannot be considered for Assessment and the complainant will be informed that no further action will be taken in respect of the complaint. The Subject Member concerned will also be told of the complaint and that it

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had failed the Initial Intake test. The relevant Clerk will be informed of a complaint relating to a Town or Parish Councillor when a complaint passes the Initial Intake Test. The Monitoring Officer may advise the complainant that the complaint needs to be referred elsewhere, if appropriate.

### Assessment test

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

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

#### Sufficiency of Complaint

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

#### Evidence

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

#### Suitability for Investigation

- Is it sufficiently serious
- Would an investigation serve any useful purpose
- Have the circumstances changed
- Is it serious enough to warrant a sanction
- Is the conduct seriously and unreasonably disrupting the business of the authority
- How long ago did the alleged conduct occur
- Is an investigation likely to prove on the balance of probability that a breach took place
- Is it likely that an investigation will prove only a technical or inadvertent breach
- Has the same or a substantially similar complaint already been the subject of an investigation
- Is the complaint really about dissatisfaction with a Council decision

- Is the complaint about the administrative practices of the Council rather than a Member's behaviour

### Extenuating Circumstances

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

### Possible Defences

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

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

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

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

- No further action
- Attempt informal resolution
- Recommend formal investigation

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

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

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

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

## **APPENDIX S: Annexe 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, 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) detail the procedure to be followed in respect of the investigation and the relevant timescales for responses and concluding the investigation;
  - (b) detail the sections of the Code of Conduct that appear to be relevant to the complaint;
  - (c) request contact details of any potential witnesses;
  - (d) require that confidentiality is maintained and that the complaint not be disclosed to any third party, unless disclosure is to a representative, witness, immediate family 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.

#### **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

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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 seek informal resolution or refer the matter for consideration by the



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Standards Hearing Sub Committee in accordance with the relevant procedure detailed in Annexe 3.

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## APPENDIX S: Annexe 3

### STANDARDS HEARINGS SUB COMMITTEE PROCEDURE

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

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

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### 2. Right to be accompanied by a representative

- 2.1 The Subject Member may choose to be accompanied and/or represented at the Standards Hearings Sub Committee by a fellow councillor, friend or colleague or legal counsel.

### 3. The conduct of the Standards Hearings Sub Committee

- 3.1 Subject to paragraph 3.2 below, the order of business will be as follows:

- (a) appointment of a chairman
- (b) apologies for absence;
- (c) declarations of interests;
- (d) in the absence of the Subject Member, consideration as to whether to adjourn or to proceed with the hearing (refer to paragraph 1.6 above);
- (e) introduction by the Chairman, of members of the Standards Hearings Sub Committee, the Independent Person, the Monitoring Officer, Investigating Officer, complainant and the Subject Member and their representative;
- (f) to receive representations from the Monitoring Officer and/or Subject Member as to whether any part of the hearing should be held in private and/or whether any documents (or parts thereof) should be withheld from the public/press;
- (g) to determine whether the public/press are to be excluded from any part of the meeting and/or whether any documents (or parts thereof) should be withheld from the public/press.

- 3.2 The Chairman may exercise their discretion and amend the order of business, where they consider that it is expedient to do so in order to secure the effective and fair consideration of any matter.

- 3.3 The Standards Hearings Sub Committee may adjourn the hearing at any time.

#### 3.4 Presentation of the complaint

- (a) The Investigating Officer presents their report including any documentary evidence or other material and calls any complainant witnesses;
- (b) The Standards Hearings Sub Committee may question the Investigating Officer upon the content of his/her report and any complainant witnesses.

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

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

3.6 Views/Submissions of the Independent Person

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

**3.7 Deliberations of the Standards Hearings Sub Committee**

- 3.7.1 (a) The Standards Hearings Sub Committee will adjourn the hearing and deliberate in private (assisted on matters of law by a legal advisor) to consider whether on the facts found, the Subject Member has failed to comply with the Code of Conduct.
- (b) The Standards Hearings Sub Committee will consider the views expressed by the Independent Person prior to reaching a decision(s), including any views of the Independent Person on sanction(s) to be applied [and/or recommendations to the District or Town/Parish Council or Monitoring Officer.
- (c) The Standards Hearing Sub Committee when making its decision will consider the criteria set out in Annexe 1 – Assessment test.
- (d) Where the complaint has a number of aspects, the Standards Hearings Sub Committee may reach a finding, apply a sanction and/or make a recommendation on each aspect separately.
- (e) The Standards Hearings Sub Committee will make its decision on the balance of probability, based on the evidence before it during the hearing.
- (f) The Standards Hearings Sub Committee may at any time come out of private session and reconvene the hearing in public, in order to seek additional evidence from the Investigating Officer, the Subject Member or the witnesses. If further information to assist the Standards Hearing Sub Committee cannot be presented, then the Standards Hearing Sub Committee may adjourn the hearing and issue directions as to the additional evidence required and by whom.
- (g) If evidence presented to the Standards Hearings Sub Committee highlights other potential breaches of the District or Town/Parish Council's Code of Conduct, then the Chairman will outline the Standards Hearing Sub Committee's concerns and recommend that the matter be referred to the Monitoring Officer as a 'new complaint'.
- 3.7.2 (a) Having deliberated on its decision and/or recommendation(s) and the application of any sanction(s), the Standards Hearings Sub Committee will reconvene the hearing in public and the Chairman will announce that on the facts presented to the Standards Hearing Sub Committee, the Standards Hearing Sub Committee considers that there has been a breach of the Code of Conduct, or no breach, as the case may be. The Chairman will announce the sanction(s) the Sub

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Committee is minded to apply and/or any recommendation(s) to the District or Town/Parish Council and/or Monitoring Officer.

- (b) The Chairman will invite the Independent Person, the Subject Member and the Monitoring Officer to make their representations as to whether any sanction(s) should be taken and what form any sanction(s) should take. The Independent Person will be invited to express their view on any recommendation(s) to the District or Town/Parish Council or Monitoring Officer.

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

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

### **4. Range of possible sanctions**

- 4.1 Subject to paragraph 4.4 below, where the Standards Hearings Sub Committee determines that the Subject Member has failed to comply with the Code of Conduct, any one or more of the sanctions set out in paragraph 1.5 of the document entitled "Arrangements for dealing with Code of Conduct Complaints under the Localism Act 2011".
- 4.2 The Standards Hearings Sub Committee has no power to suspend or disqualify the Subject Member or to withdraw basic or special responsibility allowances.

4.3 The Standards Hearings Sub Committee may specify that any sanction take effect immediately or take effect at a later date and that the sanction be time limited.

4.4 When deciding whether to apply one or more sanctions referred to in paragraph 4.1 above, the Standards Hearings Sub Committee will ensure that the application of any sanction is reasonable and proportionate to the Subject Member's behaviour and that any sanction does not unduly restrict the Subject Member's ability to perform the functions of a councillor. The Standards Hearings Sub Committee will consider the following questions along with any other relevant circumstances or other factors specific to the local environment and/or the Conventions 'proportionality' requirements:

- (a) What was the Subject Member's intention and did they know that they were failing to follow the District or Town/Parish Council's Code of Conduct?
- (b) Did the Subject Member receive advice from officers before the incident and was that advice acted on in good faith?
- (c) Has there been a breach of trust?
- (d) Has there been financial impropriety, e.g. improper expense claims or procedural irregularities?
- (e) What was the result/impact of failing to follow the District or Town/Parish Council's Code of Conduct?
- (f) How serious was the incident?
- (g) Does the Subject Member accept that they were at fault?
- (h) Did the Subject Member apologise to the relevant persons?
- (i) Has the Subject Member previously been reprimanded or warned for similar relevant misconduct?
- (j) Has there been a relevant previous breach of the District or Town/Parish Council's Code of Conduct?
- (k) Is there likely to be a repetition of the incident?
- (l) Was it a deliberate breach of the code or was it inadvertent (i.e. the Member thought that he/she was acting in a private capacity)? If capacity is an issue the Standards Hearings Sub Committee will need to give reasons for its decision that the Subject Member was or was not acting publicly.

**5. Publication and notification of the Standards Hearings Sub Committee's decision(s) and/or recommendation(s)**

5.1 Within 10 working days of the Standards Hearings Sub Committee's announcement of its decision and/or recommendations, the Monitoring Officer will publish the name of the Subject Member and a summary of the Standards Hearings Sub Committee's decision and/or recommendations and reasons for the decision and/or recommendations on the District Council's website.

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



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

**Complaint No: xxxx**

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

**Complaint summary**

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

**Consultation with Independent Person**

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

**Findings**

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

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

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

[Detail recommendations]

**Sanctions applied**

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

**Appeal**

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

**Notification of decision**

This decision notice is sent to the:

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

**Additional help**

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

**Signed:**

**Date**

**Print name:**

Chairman of the Standards Hearings Sub Committee Sevenoaks District Council,

Argyle Road,

Sevenoaks,

TN13 1HG



## APPENDIX S: Annexe 4 COMPLAINT FORM

1. Your Details - Please provide us with your name and contact details

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

Your address and contact details will not usually be released unless necessary or 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 (Subject Member)
- The parish or town clerk (if applicable)

and the Monitoring Officer will be aware of your complaint.

We will tell them your name and give them a summary of your complaint. We will give them full details of your complaint and the Subject Member(s) concerned will be given the right of reply to your complaint, before Initial Assessment.

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 Standards Committee
- Member of Parliament
- Other Council Officer or authority employee

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Other ( )

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

Title	First name	Last name	Council or authority name

### 4. Making your complaint

Please explain in this section (or on separate sheets) what the Subject Member has done that you believe breaches the relevant Code of Conduct of the District Council or the particular Town/Parish Council. If you are complaining about more than one member you should clearly explain what each individual person has done that you believe breaches the Code of Conduct.

Please provide us with the details of your complaint setting out the specific Code provisions you believe have been breached and how the conduct breaches the Code. You must submit with the complaint supporting witness statements and evidence. If these are not provided the Council may not investigate on your behalf. Continue on a separate sheet if there is not enough space on this form.

It is important that you provide all the information you wish to have taken into account when it is decided whether to take any action on your complaint.

For example:

Have you been specific, wherever possible, about exactly what you are alleging the member said or did.	YES/NO
Have you provided the dates of the alleged incidents wherever possible. If you cannot provide exact dates it is important to give a general timeframe	YES/NO
Have you confirmed whether there are any witnesses to the	YES/NO

alleged conduct and provided their names and contact details if possible.	
Have you provided all relevant background information and evidence	YES/NO
Did the behaviour take place within the last 30 days.	YES/NO
Have you sent the complaint to the police, ombudsman or another complaint process	YES/NO PLEASE PROVIDE DETAILS IF YES

Name of Witness(es)	Address of Witness(es)

5. Initial Tests

Before assessment of a complaint begins, the complaint has to meet the tests set out in Annexe 1 entitled “Criteria for Assessment of Complaints against Members in respect of the Code of Conduct”

If the complaint fails one or more of the Initial Intake tests set out in Annexe 1 entitled “Criteria for Assessment of Complaints against Members in respect of the Code of Conduct” it cannot be considered for Assessment and the complainant will be informed that no further action will be taken in respect of the complaint. The member(s) concerned will also be told of the complaint and that it had failed Initial Intake.

Furthermore, if you identify witnesses yet fail to provide witness statements or claim that there is supporting evidence but fail to supply it the complaint may not meet the Initial Intake tests for acceptance or satisfy Assessment tests when the merits are considered.

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If you have any queries please direct these to the Monitoring Officer, on 01732 227180

### 6. Additional Help

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

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

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

Help will be given in assisting a complainant who has a disability that prevents them from making a complaint in writing. Please contact the Monitoring Officer on 01732 227245 if you need such assistance.

This publication is available in large print. For a copy telephone 01732 227162. If you need help understanding the publication we can arrange for an interpreter to help you. Please call on 01732 227180 stating your language and telephone number.

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To return the completed form:

e-mail to: [members.conduct@sevenoaks.gov.uk](mailto:members.conduct@sevenoaks.gov.uk) (please save a copy for your records)

Fax: 01732 740693

Paper copy to: The Monitoring Officer  
C/o The Standards Committee, Sevenoaks District Council  
Argyle Road, Sevenoaks, Kent TN13 1HG