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Council Meeting

TUESDAY 15TH MAY 2012 AT 6.00 p.m.
COUNCIL CHAMBER, PARK NORTH, NORTH STREET, HORSHAM

(Please note that before the meeting commences prayers will be taken by Councillor George Cockman)

To: All Members of the Council

You are summoned to attend the meeting of the Council for the transaction of the following business

Tom Crowley
Chief Executive

AGENDA

**Page
No.**

1. Apologies for absence.
2. To approve as correct the record of the meeting of the Council held on 25th April 2012 (to follow)
3. To receive any declarations of interest from Members.
4. To receive any announcements from the Chairman of the Council, the Leader, Members of the Cabinet or the Chief Executive.
5. To receive questions from the public.
6. To receive any petitions, of which due notice has been given in accordance with Part 4J of the Council's Constitution.
7. To receive questions from Members under Rule 10.2 (Questions by Members on notice)
8. To receive the following reports:
 - (a) Report of the Cabinet Member for Efficiency & Resources on The Town Hall, Market Square, Horsham **1**
 - (b) Report of the Monitoring Officer on The Localism Act 2011 – The Amended Standards Regime
(Please bring with you the report circulated with the agenda for the Council meeting on 25th April 2012)



9. To consider matters certified by the Chairman as urgent.

EXTRACT FROM THE COUNCIL'S CONSTITUTION REGARDING QUESTIONS BY MEMBERS

10. QUESTIONS AND STATEMENTS BY MEMBERS

10.1 On reports of the Executive or committees

A member of the Council may

- (a) ask the Leader, member of the Executive or the chairman of a committee any question without notice upon an item of the report of the Executive or a committee when that item is being received or under consideration by the Council;
- (b) make a statement on such an item as is referred to in Rule 10.1(a).

10.2 Questions on notice at full Council

Subject to Rule 10.3, a member of the Council may ask:

- the Chairman;
- the Leader;
- a member of the Executive;
- the chairman of any committee or sub-committee

a question on any matter in relation to which the Council has powers or duties or which affects the District.

10.3 Notice of questions

A member may only ask a question under Rule 10.2 if either:

- (a) he or she has given notice in writing of the question **no later than 12.00 on the last but one working day** before the meeting to the Chief Executive; or
- (b) the question relates to urgent matters, he or she has the consent of the Chairman to whom the question is to be put and the content of the question is given to Chief Executive by 12.00 on the day of the meeting.

10.4 Response to questions

An answer may take the form of:

- (a) a direct oral answer;
- (b) where the desired information is in a publication of the Council or other published work, a reference to that publication; or
- (c) where the reply cannot conveniently be given orally, a written answer circulated later to the questioner.

10.5 Supplementary question

A member asking a question under Rule 10.2 may ask one supplementary question without notice of the member to whom the first question was asked. The supplemental question must arise directly out of the original question or the reply.

10.6 Length of questioning

Unless the Chairman specifies otherwise, the time available to the questioner shall be limited to two minutes initially and one minute for supplementary questions. The time available to the respondent shall be limited to five minutes initially and to two minutes for supplementary questions.

10.7 Statement in response by questioner

A member asking a question or questions may make one statement in response to the answer or answers received and, unless the Chairman specifies otherwise, the time available to the questioner shall be limited to five minutes.

10.8 Statements under Rule 10.1b

Unless the Chairman specifies otherwise, the time available to a member making a statement under Rule 10.1(b) shall be limited to five minutes.

Report to Council

15th May 2012

By the Cabinet Member for Efficiency & Resources

DECISION REQUIRED

Not exempt



Horsham
District
Council

servicing our towns and villages

The Town Hall, Market Square, Horsham

Executive Summary

The purpose of this Report is to consider the offers made for either the letting or freehold disposal of the Town Hall received by noon 13th April 2012.

On 21st December 2011 Council resolved :-

- (i) That Horsham Town Hall be remarketed and that offers be invited for leasehold or freehold disposal.
- (ii) That the preparation of the sales particulars and agreement and publication of the evaluation criteria for any bids, taking into account the building's status as a listed building and its location within the Town Centre conservation area, be delegated to the Cabinet Member for Efficiency & Resources.

The evaluation criteria were authorised by the Cabinet Member for Efficiency & Resources on the 16th of February 2012 and circulated to all members. The agreed evaluation criteria place 55% weighting on financial factors including price, 15% on financial status of the bidders and the remaining 30% on qualitative issues. The evaluation matrix can be found at Appendix 2 entitled Evaluation Tool. The agreed evaluation criteria were provided to the agents.

The Premises were subsequently marketed jointly by Davis Coffey Lyons, (retained Agents from the previous marketing exercise) and a local Commercial Agent, Crickmay Surveyors. A deadline for receipt of bids was set for noon 13th April 2012.

Four compliant bids were received by the closing date:

- Harvey Sands LLP - Offer for the Freehold Interest - £650,000
- Harvey Sands LLP - Offer for the Freehold Interest - £500,000 plus a 5 -10 year leaseback of the first floor to the Council at a peppercorn rent for community use
- WJ King Brewers Limited - An offer of £60,000pa for a 20 year Lease with 12 month rent free period and the second year at 50% of rent for use at Ground Floor as an Espresso bar and cafe with retention of one ground floor room for letting out for community uses with the first floor use as a Traditional Ale House Style bar.

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- Bills Produce Store Limited - An offer of £60,000pa for a 20 year Lease with six month rent free period for use as a Restaurant on both floors pursuant to the existing Planning Permission DC/08/2321.

Having assessed the bids using the 'Evaluation Tool' previously authorised by the Cabinet Member for Efficiency & Resources on the 16^h of February 2012 the summary of bid scores is as follows :

Name of Bidder	Score
Harvey Sands LLP offer for Freehold - £650,000	51.53
Harvey Sands LLP offer for Freehold - £500,000	48.52
WJ King Brewers Limited	84.62
Bills Produce Store Limited.	93.56

Recommendations

The Council is recommended to approve the offer that scores most highly on the Evaluation Tool. The highest scoring bid is Bills Produce Store Limited. The Council is also recommended to approve that in the event that the disposal to Bills Produce Store Limited does not proceed for any reason then the Council may proceed with the offer from W J King Brewers Limited without any need to obtain further Council authority.

Reasons for Recommendations

- i) It is felt that the decision whether to accept an offer from the offers received is something that should be decided by the Council to determine the best value to the Council and its ratepayers having regard to the financial and other non-financial benefits derived from each bid and having regard to the results derived from the application of the Evaluation Tool.

Background Papers:

Previous Council Report and Minutes of the Meeting held 21st December 2011.
Delegated Authority Report of 16th February 2012.

Consultation:

Cabinet Member for Efficiency & Resources,
Chief Executive
Head of Finance and Legal Services,
Planning Conservation Officer
Estate Management & Valuation surveyor
Principal Property Solicitor
Council Solicitor
Monitoring Officer

Wards affected:

Denne

Contact : John A Loxley Ext. 5483, Estate Management & Valuation Surveyor

Background Information

1 Introduction

The purpose of this report

- 1.1 The purpose of this Report is to consider the offers made for either the letting or freehold disposal of the Town Hall received by noon 13th April 2012.

Background/Actions taken to date

- 1.2 As stated in the Council Report on the 21st of December 2011, the Town Hall has been marketed by the Council since 2008. The initial marketing exercise for restaurant use secured an offer from a restaurant and produce store and a conditional agreement for lease was agreed.
- 1.3 There were a number of subsequent delays in finalising the agreement caused in part by an unsuccessful attempt by a local organisation to challenge the Council's planning decision in High Court. Eventually the intended lessee withdrew this offer.
- 1.4 To ensure the Council realises best value for the Council it was agreed to re-market the property to generate wide interest from both community and commercial organisations.
- 1.5 On 21st December, 2011 Council approved the proposed re-marketing of the premises without prescribing the use to which it should be put other than to require that the use should be suitable for the Old Town Hall's status as a Listed Building and its location in the Horsham Town Centre Conservation Area. In addition, rather than only offering the building on a leasehold basis it was proposed that bids for freehold sale should also be entertained. If offers for other than the existing authorised uses (including the A3 (restaurant) use permitted in 2009) were put forward, and they were considered suitable in terms of the proposed disposal, agreement with the successful bidder would need to be made subject to the necessary planning approvals being obtained.

It was resolved by Council:

- That Horsham Town Hall be re-marketed and that offers be invited for leasehold or freehold disposal.
- That the preparation of the sales particulars and agreement and publication of the evaluation criteria for any bids, taking into account the building's status as a listed building and its location within the Town Centre conservation area, be delegated to the Cabinet Member for Efficiency & Resources.
- That, following completion of the marketing exercise and the evaluation of bids, the Cabinet Member for Efficiency & Resources recommend the most beneficial bid to Council for decision.

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- 1.6 The Cabinet Member for Efficiency and Resources exercised powers of delegated authority on 16th February 2012 vested in him by Council on the 21st December 2012 to approve:-
- the proposed evaluation matrix tool to evaluate bids for either the letting or disposal of the property from a variety of potential bidders.
 - That proper consideration be given to bids received from Community Organisations or other non-commercial parties based on criteria laid down in the Horsham District Plan and reproduced on the second page of the evaluation tool.
 - The draft advertising particulars which were attached thereto and marketing proposals which were set out in the Report.
- 1.7 The Premises were subsequently marketed jointly by Davis Coffey Lyons, (retained Agents from the previous marketing exercise) and a local Commercial Agent, Crickmay Surveyors. A deadline for receipt of bids was set at Noon 13th April 2012.
- 1.8 The evaluation tool was devised to enable any potential benefit to the local economy and amenity to be considered along with the suitability of physical alterations to the Grade II listed building and consideration of the Town Centre Conservation Area.
- 1.9 Following approval of the evaluation tool by the Cabinet Member for Efficiency & Resources on 16th February 2012, the Commercial Agents were advised to supply copies if requested by prospective bidders.

2 Statutory and Policy Background

2.1 Statutory background

The Local Government Act 1972 section 123(2) places an obligation on the Council to dispose of land only at the best price reasonably obtainable unless:

- (a) the Secretary of State grants specific consent for the disposal, or
- (b) disposal at an under-value is likely to contribute to the promotion or improvement of economic, social or environmental well-being in the Council's area and the extent of the under-value is less than £2,000,000.

2.2 Relevant Government policy

- ODPM Circular 06/03: Local Government Act 1972 general disposal consent (England) 2003 disposal of land for less than the best consideration that can reasonably be obtained.
- Comprehensive Spending Review 2007. Focus on value for money and achieving efficiency gains, particularly cashable savings.
- Lyons Review 2004 – Urges Councils to better exploit under-used assets and assets no longer required for service delivery.

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- RICS Public Sector Asset Management Guidelines 2008 and DCLG Framework for Local Authority Asset Management 2008.
- “Strategic Asset Management is the activity that seeks to align the asset base with the organisation’s goals and objectives. It ensures that the land and building asset base of an organisation is optimally structured in the best corporate interest of the organisation concerned.

2.3 Relevant Council policy

- The proposal is consistent with District Plan priorities 1, “Economic Development” and 2, “Efficiency and Taxation” in that it will help secure a beneficial use for the Town Hall which should make a positive impact on the town centre economy. It will also help realise value from this currently unused asset.

3 Details

- 3.1 The following bids were received from the following persons or organisations by the closing date of noon on the 13th of April 2012;

Harvey Sand LLP : £650,000 for the freehold sale of the building with unrestricted use for refurbishment and subsequent letting, subject to the existing Planning Permission DC/08/2321 being capable of being implemented

Harvey Sand LLP: £500,000 for the freehold sale of the building plus a 10 year Leaseback of First Floor to the Council at a peppercorn rent for Community or other use subject to a 5 year mutual break clause and subject to the existing Planning Permission DC/08/2321 being capable of being implemented.

WJ King Brewers Limited: An offer of £60,000pa for a 20 year Lease with 12 month rent free period, the second year at 50% rent & 5 year rent reviews for use at Ground Floor as an Espresso Cafe & Bar with retention of one Room for Letting out for Community & Other Uses with the First Floor use as a Traditional Ale House Style bar plus use of a small room as a heritage centre celebrating Brewing History in Horsham, with Tenant’s 10 and 15 year Break Clauses. Serving locally brewed ales and providing 10 local jobs. A capital investment of £75,000 to £100,000 is planned.

Bills Produce Store Limited: An offer of £60,000pa for a 20 year Lease with 5 year rent reviews and 6 month rent free period for use as a Restaurant on both floors pursuant to the existing Planning Permission DC/08/2321. A capital investment of at least £750,000 is planned.

- 3.2 In addition, a sealed bid was received from a community group, Blue Flash Music Trust, by the deadline; however, the group requested that their bid was not opened until after the conclusion of their pending Judicial Review application.

The Council considered whether it would be appropriate to delay the timescales for evaluating the bids received for the Town Hall, however, considering the current marketing exercise, the expectation of the other bidders, the financial outlook for the Council and the uncertainty of the Judicial Review timetable, it was concluded that the bid process should not be put on hold.

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Despite further requests by Officers to the community group, the community group refused to allow its bid to be opened and considered as part of the bid evaluation exercise.

- 3.3 The bids were evaluated in accordance with the evaluation matrix. The financial aspects of the bid (section one) carries a 55% weighting and the financial status (section two) a further 15% weighting. A total of 70% of the score results from financial elements of the bids.

The qualitative elements of the bid comprise the final 30% of the score. For section three of the evaluation tool, Potential Benefit to Local Economy & Amenity with reference to the District Plan, each of the District Plan priorities were considered equally. An additional criterion was set comparing the proposed facility to the surrounding environment. The total section is worth 20%. For Section 4, the suitability of any required physical alterations to building status as a Grade 2 listed building, each of the two criteria carried 5%.

- 3.4 The original timetable was to consider the results of the marketing exercise at Full Council on the 25th of April 2012. However, the tight timetable for agenda papers did not give sufficient time to request further information from bidders and give sufficient time for consideration by the evaluation panel.

Further bid information was requested by all bidders to help inform the evaluation criteria. The detailed follow up questions submitted to all bidders is attached in **Appendix 3**.

- 3.5 The financial evaluation considered the cash flows generated by the different bids. If the cash flows were to be received in the future, they were discounted back to today's value. In addition the financial standing of each bidder was considered by reviewing the accounts for the bidding organisations.

The qualitative elements of the bid were scored against the information received from each bidder. This information included the bid offer, further correspondence with the bidders, prepared presentations, and a review of websites.

- 3.6 The results of the bidding evaluation are as follows:

Name of Bidder	Score
Harvey Sands LLP offer for Freehold - £650,000	51.53
Harvey Sands LLP offer for Freehold - £500,000	48.52
WJ King Brewers Limited	84.62
Bills Produce Store Limited	93.56

The Council is recommended to approve the best offer that satisfies Best Value to the Council having regard to the aims of the Horsham District Plan in accordance with the evaluation tool. The highest scoring bid is Bills Produce Stores Limited.

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The Council is also recommended to approve that in the event that the disposal to Bills Produce Store Limited does not proceed for any reason then the Council may proceed with the offer from W J King Brewers Limited without any need to obtain further Council authority.

4 Next Steps

- 4.1 To carry out due diligence, financial checks and seek references on the successful bidder.
- 4.2 To enter into detailed discussions to agree any finer points of detail regarding the proposals and to agree final Heads of Terms before instructing Solicitors to complete the necessary documentation.

5 Outcome of Consultations

- 5.1 No objections were received from the internal Officer Consultees.

6 Other Courses of Action Considered but Rejected

- 6.1 None

7 Staffing Consequences

- 7.1 None other than Estates staff and Legal Services staff in finalising the details and drafting and completing the legal documentation,

8 Financial Consequences

- 8.1 As a result of accepting the proposed recommendation the revenue income to the Council will increase by £30,000 in the first year of the lease and £60,000 in each subsequent year.
- 8.2 In addition the Council will save the costs of managing and maintaining the building in the future. These costs over the past three years averaged at £3,000 per year.

Appendix 1

Consequences of the Proposed Action

<p>What are the risks associated with the proposal?</p> <p>Risk Assessment attached: No</p>	<p>If the bidder is unable to trade successfully, the Council potentially could lose the projected rental income. That third parties may attempt to delay the process through legal challenges</p>
<p>How will the proposal help to reduce Crime and Disorder?</p>	<p>It will not have any influence on crime & disorder but will comply with the Council's existing policy.</p>
<p>How will the proposal help to promote Human Rights?</p>	<p>The Human Rights Act 1998 requires not only that the Council shall not infringe the convention rights but also (by inference) promotes the convention rights.</p> <p>(1) any detrimental effects upon citizens' Convention rights arising from the proposal and how this is justified;</p> <p>(2) how the proposal enhances or promotes the convention rights; and</p> <p>(3) also ask is the action proportionate to the anticipated response or outcome.</p> <p>In particular you should consider Articles 6 (Determination of civil Rights), 8 (A Right to Family Life etc) and Article 1 of the First Protocol (Right to Property)</p> <p>It is considered that the proposal is compliant with the Human Rights Act 1988. The results from the evaluation using the Evaluation Matrix tool are considered to be in accordance with the relevant provisions</p>
<p>What is the impact of the proposal on Equality and Diversity?</p> <p>Equalities Impact Assessment attached No</p>	<p>The Equality Act 2010 brings together the current laws and in some cases extends current equality laws. The new provisions come into force over a phased period commencing on 1st October 2010 and include an obligation upon the Council as a public authority to have due regard to the need to:</p> <ol style="list-style-type: none"> 1. eliminate unlawful discrimination, harassment and victimisation; 2. advance equality of opportunity between different groups; and 3. foster good relations between different groups. <p>It is considered that the proposal is compliant with the Equality Act 2010. The results from the evaluation using the Evaluation Matrix tool are considered to be in accordance with the relevant provisions</p>
<p>How will the proposal help to promote Sustainability?</p>	<p>It is considered that the proposal will assist the Council to reduce its impact on the environment by ensuring as far as possible that the building is kept in a good state of repair. This is considered to be in compliance with the Council's policy</p>

APPENDIX 2

DISPOSAL BY FREEHOLD AND LEASEHOLD EVALUATION TOOL

NB ALL BIDS RECEIVED BY THE COUNCIL WILL BE CONSIDERED IRRESPECTIVE OF SCORING VALUE HAVING REGARD TO THE HORSHAM DISTRICT PLAN (extracts of which are set out overleaf)

PROPERTY:	TOWN HALL, MARKET SQUARE HORSHAM			
NAME OF APPLICANT:				
Current Use of Building;	Town Hall and Offices with Planning Consent for A3 Restaurant Use and Listed Building Consent HU/08/2321: Planning Portal Link: http://public-access.horsham.gov.uk/public-access/simpleSearchResults.do;jsessionid=9D6B870A5C823B66400D2316C1D8603F?action=firstPage			
Proposed Use:	(Alternative Uses to the above will also be considered subject to Planning Permission)			
Object	Offer	Score	Weighting %	Value
1. Financial: Including		/10	55	
1.1 Capital Receipt				
1.2 Rental Offer				
1.3 Lease Term				
1.4 Estimated Net Present Value of Cash Flow to HDC.				
1.5 Est. Revenue savings to HDC.				
1.6 Est. Capital investment in works				
2. Financial Status: Including		/10	15	
2.1 Financial Covenant of Bidder				
2.2 Viability of Bus. Plan / Track record				
2.3 Reliance on Revenue Grant Aid (-ve)				
3. Potential Benefit to Local Economy & Amenity: With reference to District Plan. (See overleaf for full details)		/10	20	
3.1 Economic Development: Plan for a successful local economy with high levels of employment .				
3.2 Arts Heritage & Leisure: Build an Arts, Leisure and Cultural reputation that also supports the economy.				
3.4 Living Working Communities: Working together to support the life of local communities.				
3.5 Environment: A better environment for today & tomorrow.				
3.6 Safer & Healthier; Improving Health & Wellbeing.				
3.7 Does the proposal provide a beneficial facility that is not available within or adjacent to the Town Centre?				
4. Suitability of any required physical alterations to building status as a Grade II listed building		/10	5	
4.1 Will Listed Building Consent be required and achievable?				

4.2 Retention of character of building, potential public access to and maintenance of listed features.				
5. Suitability of proposed use for building's location within Town Centre Conservation Area.		/10	5	
TOTAL		/50	100	/100

Fuller Details of Horsham District Plan:

<p>Economic Development: Plan for a successful local economy with high levels of employment .</p> <ul style="list-style-type: none"> • Support the Government's new Local Enterprise Partnership policies. • Help our Local Businesses and increase employment. • Improve our public areas, retail environment and economic vitality. • Support our communities.
<p>Efficiency & Taxation: Delivering excellent value and high performance.</p> <ul style="list-style-type: none"> • Keep Council Tax low • The customer is at the heart of what we do. • Redesign the way we deliver services.
<p>Arts Heritage & Leisure: Build an Arts, Leisure and Cultural reputation that also supports the economy.</p> <ul style="list-style-type: none"> • Promote local arts and culture to both our residents and visitors. • Maintain the excellent range, quality and value of our leisure services.
<p>Living Working Communities: Working together to support the life of local communities.</p> <ul style="list-style-type: none"> • Strengthen relationships and listen to our community. • Provision of Housing to meet local and economic needs. • Consider wider community consequences of development in the District. • Access to our services. • Support strong Local Communities.
<p>Environment: A better environment for today & tomorrow.</p> <ul style="list-style-type: none"> • Provide a cleaner greener Horsham District using 'Intelligently Green' policies • Minimise waste, maximise re cycling. • Retain the special character of our District through effective Planning Policies.
<p>Safer & Healthier; Improving Health & Wellbeing.</p> <ul style="list-style-type: none"> • A Healthy District • Reduce crime, fear of crime and anti social behaviour.

APPENDIX 3

HORSHAM TOWN HALL

ADDITIONAL QUESTIONS

General

- Explain the profile of the company
- What is your business model/offer
- Images / artists impression of proposals – computer image? Can this be provided?

Potential Benefit to Local Economy & Amenity

Economic Development

- How many new jobs will be created?
- How will investment be spent? What is the specific value of the investment?
- What is the anticipated footfall for the proposed establishment?

Arts Heritage and Leisure

- Do you intend to preserve the existing features? Specifically what are your proposals for the clock and cells?
- How does your proposal complement the existing heritage of Horsham?

Living Working Communities

- What is the proposed access of the community for the building?
- Have you considered DDA issues, specifically for community use?
- How can the community enjoy the existing features?

Environment

- What are the likely opening/operating hours of your proposal?
- What is the environmental impact of your proposed activity, eg. bins, storage?

Safer and Healthier

- Does your proposal contribute to a healthier Horsham?
- Will there be any impact on crime or antisocial behaviour?

Beneficial Facility to Town Centre

- What value are you bringing to the town centre which would add to the Town Centre's appeal?

Suitability of any required physical alterations to building status as a Grade 2 listed building

- Will listed building consent be required and achievable?
- What are the refurbishment proposals?

Suitability of proposed use for building's location within Town Centre Conservation Area

- How will your proposals complement the conservation area?
- What would you do to protect the retention and character of the area?

Report to Council

25 April 2012

By the Monitoring Officer

DECISION REQUIRED

Not exempt



Horsham
District
Council

servicing our towns and villages

The Localism Act 2011 - the amended Standards' Regime

Executive Summary

On February 22 2012 members received a detailed report on the Localism Act 2011 and in particular the provisions of Chapter 7 which require the Council to establish afresh a system of regulation of standards of conduct for elected and co-opted Councillors. The new provisions are likely to come into force on 1 July 2012. The Order from the Secretary of State is still awaited. An update from the Chairman of the Council on the work of her cross party Standards' Liaison Group set up to consider detailed options for a new standards regime and to make recommendations to Council was also provided.

As part of the first wave of actions required under the new legislation Members have approved the recruitment of one Independent Person and one reserve Independent Person at an allowance not to exceed £1195 plus expenses in order to comply with the provisions of the Localism Act 2011 s 28(7). A recruitment pack has been prepared and it is anticipated that formal appointment will come before full Council in June 2012.

This report is to:

- i) inform Members of the Council and all those who may be interested about further developments in the revised standards framework since last meeting and the work of the Standards' Liaison Group;
- ii) recommend the second wave of actions required for the Council to implement the new regime; and
- iii) instruct the Monitoring Officer to prepare a further report to be presented to Council in June 2012 with hopefully the final wave of actions required.

Recommendations

The Council is recommended:

1. to note the current developments in the revised standards framework and the views of the Chairman's Standards' Liaison Group;

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2. Committee formation.

- (1) to establish an ordinary committee to be called the Standards Committee comprising seven elected members of the Council reflecting the political balance of the Council as from 1 July 2012 or such other date as the government may provide as the commencement date for the new standards' provisions in Chapter 7 of the Localism Act 2012;
- (2) that membership of the committee be as set out in Appendix A;
 - the Leader of the Council should be requested to nominate to the Committee one member (but no more than one member) who is a member of the Executive;
 - the Chairman of the Council from time to time shall be a member of the Committee;
 - that parish councils be invited to nominate 2 parish councillors to be co-opted as non voting members of the Committee;
 - that the Independent Person and the reserve Independent Person appointed by the Council under the Localism Act 2011 s 28(7) be co-opted as non-voting members of the Committee;
- (3) that the two co-opted parish representatives be paid an allowance of £935 p.a. plus expenses each.
- (4) That terms of reference of the committee be as set out in Appendix B;
- (5) that all necessary consequential revisions to the Constitution be authorised resulting from the formation of this new committee.

3. Code of conduct.

- (1) That the Monitoring Officer be instructed to prepare and present to Council in June for formal adoption a draft Code of Conduct.

That the draft Code should:

- i. equate to paragraphs 3 – 7 of the current Code of Conduct (see Appendix C) applied to member conduct in the capacity of an elected or co-opted member of the Council; and
 - ii. require registration and disclosure of interests which would today constitute personal and/or prejudicial interests, but only require withdrawal from a meeting in relation to “disclosable pecuniary interests”.
- (2) That when the Regulations are published in relation to “disclosable pecuniary interests” the Monitoring Officer after consultation with the Chairman of the Council, add to the draft Code provisions which she considers appropriate for the registration and disclosure of interests other than ‘disclosable pecuniary interests’.

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4. Complaints.

- (1) That the Monitoring Officer be appointed Proper Officer to receive complaints about failure to comply with the Code of Conduct both in relation to district and parish complaints.
- (2) That the Monitoring Officer be instructed to seek resolution of complaints without the need for formal reference to the Assessment Sub-Committee wherever practicable. That the Monitoring Officer report such informal resolutions to the Standards Committee quarterly to draw the committees attention to areas where training or other action might avoid further complaints and lessons may be learned and to allow the Standards Committee to confirm that complaints have been appropriately handled.
- (3) In the event that local resolution proves impracticable in the view of the Monitoring Officer to refer such complaints to the Local Assessment Sub-committee for assessment to determine whether or not the complaint should be investigated.
- (4) That the procedure for assessment, investigation and local determination of formal written complaints regarding members and co-opted members of the district council and the 32 parish councils within the district as set out in Appendix D, D(A), E, F and G be approved and all necessary powers be delegated to the Monitoring Officer and relevant committees and sub-committees to enable the procedure to operate and minor revisions to the procedure to be made, as required.

5. Register of Interests.

- (1) To request the Monitoring Officer, following receipt of the regulations to be issued by the Secretary of State, to present to Council in June a report containing proposals for a new Register of Interests together with details concerning the proposed criminal offences included within the Localism Act 2011 in relation to interests.

6. Withdrawal from meetings.

- (1) That the Council's Constitution be revised to require a member to withdraw from the meeting room, including the public gallery, during the whole of consideration of any item of business in which he or she has a disclosable pecuniary interest except where he or she is permitted to remain as a result of a dispensation.

7. Dispensations.

- (1) That the Monitoring Officer be appointed the Proper Officer for the receipt of applications for dispensation.
- (2) That the Council delegate all necessary powers to determine applications for dispensation to the Monitoring Officer the Standards Committee or any sub-committee appointed for the purpose.
- (3) That the Dispensation Scheme attached as Appendix H be approved and all necessary powers delegated to the Monitoring Officer and the relevant committee

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and sub-committees to enable the procedure to operate and minor revisions to the scheme to be made as required.

8. Constitution – other changes.
 - (1) To approve the revised Monitoring Officer Protocol as set out in Appendix I.
 - (2) to revise the Scheme of Delegation to Officers to provide for the Chief Executive to be able to exercise the powers in section 3A of the Local Government and Housing Act 1989 (Grant and Supervision of exemption from political restriction:England) in accordance with Appendix J;
 - (3) To revise the Scheme of Delegation to Officers to provide for the Monitoring Officer to (1) act as Proper Officer for the receipt of requests for grant of a dispensation and to grant such applications for dispensation and (2) to seek to resolve complaints without the need for formal reference to the Assessment Sub-Committee wherever practicable.

Reasons for Recommendations

- i) To ensure Members of the Council and others to whom the report is circulated are kept up to date with developments flowing from the Localism Act 2011 in relation to standards and member conduct; and
- ii) To comply with the statutory obligations placed upon the Council and its Members set out in Chapter 7 of the Localism Act 2011.

Background Papers	Localism Act 2011
Consultation	CMT Standards Liaison Group All Standards Committee Members
Wards affected	All
Contact	Sandra Herbert Monitoring Officer extn 5482

Background Information

1 Introduction

The purpose of this report

- 1.1 The purpose of this report is to;
- (i) inform Members of the Council and all those who may be interested about developments in the revised standards framework following enactment of the Localism Act 2011 which affect the role and activities of Councillors and the Council's business and the work of the Chairman's Standards' Liaison Group;
 - (ii) recommend the second wave of actions required for the Council to implement the new regime; and
 - (iii) instruct the Monitoring Officer to prepare a further report to be presented to Council in June 2012 with hopefully the final wave of actions required to comply with the new legislation.

Background/Actions taken to date

- 1.2 The present national standards regime came into being in 2000, as part of the Local Government Act 2000. It established a code of conduct, local standards committees and a Standards Board for England. The code of conduct set out expected standards of behaviour for elected and co-opted members. Standards committees were established to assist local authorities in maintaining good standards and the Standards Board for England was established to provide guidance and to monitor and investigate complaints.
- 1.3 Systems in place at the Standards Board were considered unnecessarily bureaucratic and significant delays were experienced with their handling of complaints. This resulted in changes to the process in 2007. As a result of these changes the determination of complaints against members was delegated from the Board to local standards committees for all but the most serious of cases. At this point the Standards Board for England became only a strategic regulator.
- 1.4 The Localism Bill, published in late 2010, proposed both the abolition of the Standards Board and the current national Standards Regime in operation at local level.
- 1.5 Significant changes were made to the Localism Bill throughout its passage. Under the Act The Standards Board has been abolished as originally proposed and the current standards regime will be abolished when the legislation is brought into force. However, there is now coupled with this, significant new duties and responsibilities which are being placed upon the Council in relation to standards matters, some of which require the Council to put back in place current requirements being repealed.

The Localism Act 2011 finally enacted in November 2011 requires councils to:

- promote and maintain high standards of conduct (section 27(1));
- adopt a new Code of Members' Conduct (section 27(2));

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- put in place “arrangements” for dealing with misconduct complaints in relation to both parish and district councillors (section 28(6));
- appoint at least one Independent Person (section 28(7));
- prepare and maintain a Register of Interests (section 29(1));
- comply with the introduction of criminal offences in relation to interests (section 34); and
- adopt a revised Dispensation Scheme (section 33).

1.6 A cross party Standards Liaison Group of members to discuss the way forward on standards at Horsham was established on 21 December 2011. The group consists of Councillor Claire Vickers, Councillor Liz Kitchen, Councillor David Holmes, Councillor Sheila Matthews and is assisted by the Chief Executive, the Monitoring Officer, the chairman of the Standards Committee, Val Court as parish representative on the Standards Committee and the Leader of the Council.

2 Statutory and Policy Background

Statutory background

2.1 The Localism Act 2011.

Relevant Government policy

2.2 Regulations defining in particular the nature of “Disclosable Pecuniary Interests” are awaited. A suggested model code of conduct is awaited from the Local government Association. A commencement order is also needed in relation to the provisions on standards contained in Chapter 7 of the Act.

Relevant Council policy

2.3 The Council’s policy is set out in its Constitution and through the activities of Council and the Standards Committee.

3 Details

The Localism Act 2011

3.1 The Localism Act 2011 requires the Council to establish afresh a system of regulation of standards of conduct for elected and co-opted Councillors. The Standards Board was abolished on 1 April 2012. The date for implementation of the other changes is likely to be 1 July 2012. The Order of the Secretary of State is awaited.

3.2 This report follows on from the report made on 22 February 2012 and describes the changes proposed to comply with the new standards provisions and recommends the second wave of actions required for the Council, as recommended by the chairman’s Standards’ Liaison Group, to implement the new regime. It is anticipated that a further report will be presented to full Council in June 2012 with the final wave of actions required.

Duty to promote and maintain high standards of conduct.

- 3.3 Under the new provisions the authority will remain under a *statutory* duty to *promote* and *maintain* high standards of conduct for its elected and co-opted members. (s 27).
- 3.4 Under the current Constitution provisions Council has delegated responsibility for promoting and maintaining high standards of conduct amongst its members to the Standards Committee.

Standards Committee

- 3.5 The current Standards Committee is a requirement of the Local Government Act 2000 s 55 and was set up to comply with the statutory obligation contained in the 2000 Act. Under the provisions of the Localism Act 2012, which are anticipated will be in force on 1 July 2012, s 55 will be repealed. In the future, in the spirit of localism, it will be a matter of choice for each authority as to whether it should appoint a committee. Under further provisions set out in Chapter 7 of the Localism Act the authority will have statutory obligations to:
- promote and maintain high standards of conduct amongst its members;
 - assist members to observe the code of conduct;
 - monitor the operation of the code;
 - provide training on the code;
 - grant dispensations from compliance with the code;
 - deal with complaints of breach of the code;
 - make arrangements for the appointment of Independent Persons.

As a result, it is clear, there will continue to be a need for the council to deal with all standards issues and case-work but it is for the council to decide how best these statutory functions should be discharged.

- 3.6 The Local Government Act 1972 s 101 provides that an authority may discharge any of its functions through a committee, sub-committee or officer of the authority, another local authority or jointly with one or more local authorities subject to any express statutory provision to the contrary.
- 3.7 Discussions have been taking place with other districts and boroughs within the county with a view to possibly sharing or co-opting of an Independent Person from another authority in the event that one or other of us is unable to recruit suitable candidates. As currently drafted the legislation does not permit our present Independent Members to apply. However, there appears no appetite for a shared or county wide committee to discharge the standards functions within each authority at the present time. In the circumstances the options currently available to the authority are to:
- retain responsibility unto itself ,
 - delegate responsibility to a new ordinary committee,
 - delegate responsibility to the Accounts Audit and Governance Committee, and/or
 - delegate responsibility to an officer of the Council.

- 3.9 If Council felt it would be convenient to delegate its responsibilities to a committee it would be an ordinary committee of Council without the unique features which were conferred by the previous legislation to the statutory Standards Committee.
- 3.10 The composition of any committee would be governed by proportionality unless council votes otherwise with no member voting against. The current co-opted Independent Members will cease to hold office. The current Parish representatives will cease to hold office albeit that the council will continue to have responsibility for dealing with parish councillor complaints.
- 3.11 The Chairman's Standards' Liaison Group considered the option of Council delegating responsibility for promoting and maintaining high standards of conduct and dealing with standards complaints to the Accounts Audit and Governance Committee. One benefit of this option would be the reduction of democratic services time in producing agenda and calling and arranging committee meetings if its terms of reference were combined with standards. Nevertheless, it would, however, be necessary to call sub-committee meetings to deal with conduct matters whether part of Accounts Audit and Governance or part of a formal Standards Committee. Overall, the group did not, however, consider this was an appropriate option as the committee currently dealt with strategic matters and was not experienced in dealing with individual standards' case work. They felt the committee were not currently trained in this area of work and the work load of the accounts Audit and Governance Committee was already sufficiently full.
- 3.11 *The Council must decide whether to retain responsibility for standards matters and cases unto itself, delegate responsibility to a new ordinary committee, to delegate responsibility to the Accounts Audit and Governance Committee and/or delegate responsibility to an officer.*
- 3.12 IT IS RECOMMENDED that a new committee is established as an ordinary committee of the Council to be called the 'Standards Committee' comprising seven elected members reflecting the political balance of the Council as from 1 July 2012 or such other date as the government may provide as to the commencement date of the new standards provisions in Chapter 7 of the Localism Act 2012.

It is proposed that membership of the new committee be as set out in Appendix A attached. In particular

- the Leader of the Council should be requested to nominate to the Committee one member (but no more than one) who is a member of the Executive;
- that parish councils be invited to nominate 2 parish councillors to be co-opted as non voting members of the Committee;
- that the Independent Person and the reserve Independent Person appointed by the Council under the Localism Act 2011 s 28(7) be co-opted as non-voting members of the Committee;
- the Chairman of the Council to be a member of the committee.

It is further proposed that the two parish representatives be paid an allowance of £935 p.a. plus expenses and the terms of reference for the new committee be as set out in Appendix B attached.

The code of conduct.

- 3.13 The current ten General Principles and Model Code of Conduct will be repealed under the Localism Act.
- 3.14 The new provisions however, *require* the Council to adopt a new Code of Conduct governing elected and co-opted member's conduct when acting in that capacity (s 27(2)).
- 3.15 The Act requires the new Code when viewed as a whole must be consistent with the following seven principles selflessness, integrity, objectivity, accountability, openness, honesty and leadership (s 28(1)).
- 3.16 The new code must also contain appropriate requirements for the registration and disclosure of pecuniary and interests other than pecuniary interests (s 28(2)).
- 3.17 Whilst considering content of the Code is to some extent left to authorities to decide it must be borne in mind that there is a new statutory duty to promote and *maintain* high standards of conduct. To adopt a lesser code that that which is currently operating within the council would arguably impinge upon this duty. It is unclear how to adopt a code containing standards less high than at present would enable the Council to comply with its duty to *maintain* high standards. A copy of the Council's current code is attached as Appendix C.
- 3.18 It is therefore proposed that the new Code to be adopted by the Council largely reflect the provisions in the current code with such amendments as may be required in relation to interests as are required by regulations on interests to be issued by the secretary of state.
- 3.19 The Local Government Association in consultation with the Association of Council Secretaries and Solicitors is proposing to issue a model code of conduct. To date this has not been received.
- 3.20 It is not known what progress the National Association of Local Councils has made with formulating a model code of conduct for parish councils. However, the Localism Act 2012 s 27(3) provides that a parish council may comply with its obligation to adopt a code by adopting the code adopted by the district council. It is hoped that this will be the case at the 32 parish councils within the district but no decisions have yet been made locally.
- 3.21 *The Council has to decide what it will include in its Code of Conduct.*
- 3.22 IT IS RECOMMENDED that the Monitoring Officer be instructed to prepare and present to Council in June for formal adoption a draft Code of Conduct.

It is proposed that the draft Code should firstly equate to paragraphs 3 – 7 of the current Code of Conduct applied to member conduct in the capacity of an elected or co-opted member of the Council; and secondly require registration and disclosure of interests which would today constitute personal and/or prejudicial interests, but only require withdrawal from a meeting in relation to “disclosable pecuniary interests”.

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It is further proposed that when the Regulations are published in relation to “disclosable pecuniary interests” the Monitoring Officer after consultation with the Chairman of the Council add to that draft Code provisions which she considers to be appropriate for the registration and disclosure of interests other than ‘disclosable pecuniary interests’.

Dealing with Misconduct Complaints

- 3.23 The Act requires that the Council adopt “arrangements” for dealing with complaints of breach of Code of Conduct both by the District Council members and by Parish Council members and such complaints can only be dealt with in accordance with such “arrangements”. The “arrangements” must set out in some detail the process for dealing with complaints of misconduct and the actions which may be taken against a member who is found to have failed to comply with the relevant Code of Conduct.
- 3.24 Such arrangements must explain how allegations can be investigated and decisions on allegations made (s 28 (6)).
- 3.25 As the statutory provisions in the Local Government Act 2000 dealing with such matters are to be repealed it is necessary for Council to delegate appropriate powers to any committee it might chose to appoint and/or the Monitoring Officer in relation to the handling of complaints.
- 3.26 *The Council has to decide what “arrangements” it will adopt for dealing with standards complaints and for taking action where a member is found to have failed to comply with the Code of Conduct.*
- 3.27 There has been significant discussion at the Chairman’s Standards’ Liaison Group as to how the current regime can be improved and streamlined and what discretions can be included to make the procedure more responsive. At the same time regard has been had to the need to ensure that any procedure adopted is both transparent and appropriate for the purpose, particularly having regard to the changes in the position of the Independent Member.
- 3.28 It is expected that elected and co-opted members of the Council and also the parish councils will uphold the highest standards of public office. However, in the event that there is a complaint it is important that this is handled effectively to ensure public confidence is maintained.
- 3.29 Consideration was given to the possibility of delegating responsibility to an officer, namely the Monitoring Officer, for making decisions about which allegations should be investigated and what decisions should be made on those allegations. It was felt however that this would lack transparency and could lead to the possibility of undue pressure being put on an officer in relation to decisions about district councillors.
- 3.30 Whilst delegation of such decisions to an officer was not considered appropriate in relation to district council complaints consideration was also given to the possibility of such an arrangements for parish council complaints. However, the Standards Committee felt that the creation of a two tier approach to complaints was not appropriate.

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- 3.31 In all the circumstances it was felt that best way to proceed would be to continue with the current arrangement of such complaints both in relation to district and parish members being considered by a sub-committee of members but in consultation with the new Independent Person appointed under the Act.
- 3.32 Nevertheless, the procedure guide has been revised where possible to enable the Monitoring Officer to seek to resolve complaints at the outset with the agreement of the complainant to prevent all written complaints necessarily having to come before members. This is the principle currently adopted by the Monitoring Officer and has led to a reduction in the number of cases actually coming before the sub-committee, particularly in relation to parish matters and it is proposed that this flexibility should continue.

Sanctions

- 3.33 Consideration was also given by the Standards' Liaison Group and also the Standards Committee as to the sanctions available to the committee upon finding a breach of the code by a member or co-opted member of both the district council and also the parish councils within the district.
- 3.34 Section 28(1) of the Localism Act 2011 provides that 'if a relevant authority finds that a member or co-opted member of the authority has failed to comply with its code of conduct (whether or not the finding is made following an investigation under arrangements in place under sub-section (6) it may have regard to the failure in deciding (a) whether to take action in relation to the member or co-opted member and (b) what action to take'.
- 3.35 The remedy of suspension previously available to the Standards Committee has been removed.
- 3.36 It is anticipated that the following remedies will, however, be available to the Standards Committee in the event of an allegation being proven:
- the issuing of a formal letter;
 - a formal reprimand;
 - a recommendation that the Member be removed from any or all committees or sub-committees, Cabinet or sub-committees of Cabinet,
 - a restriction of the Member's access to the premises of the relevant authority and the Member's use of the resources provided that any such restrictions imposed upon the Member (a) are reasonable and proportionate to the nature of the breach, and (b) do not unduly restrict the Member's ability to perform his or her functions as a member;
 - the publication of its findings or other relevant publicity.
- 3.37 In addition, with the agreement of the Member concerned, the Monitoring Officer may be required to:
- seek to arrange training for the Member,
 - seek to arrange a process of conciliation, or
 - secure an apology from the Member in terms agreed by the Standards Committee.
- 3.38 It is anticipated that remedies proposed by the Standards Committee in relation to parish councillors will be by way of Recommendation to the relevant Parish Council.

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In order to take operative decisions in relation to parish councillors it would be necessary for the relevant parish council concerned to have delegated their powers to the Standards Committee. This could be carried out by way of a Joint Parish Standards Committee but would need buy-in from all 32 parish councils to be effective.

- 3.39 IT IS RECOMMENDED that the Monitoring Officer be appointed the Proper Officer to receive complaints about failure to comply with the Code of Conduct both in relation to district and parish matters.

It is further proposed that the Monitoring Officer be instructed to seek resolution of complaints without formal investigation wherever practicable. That the Monitoring Officer report such informal resolutions to the Standards Committee quarterly to draw the committee's attention to areas where training or other action might avoid further complaints and lessons learned and to allow the Standards Committee to confirm that complaints have been appropriately handled.

In the event that local resolution proves impracticable in the view of the Monitoring Officer to refer such complaints to the Local Assessment Sub-Committee for assessment to determine whether or not the complaint should be investigated.

That the procedure for assessment, investigation and local determination of formal written complaints regarding members and co-opted members of the district council and the 32 parish councils within the district set out in Appendix D, D(A), E, F and G be approved and all necessary powers delegated to the relevant officers, committees and sub-committees to enable the procedure to operate and minor revisions to the procedure to be made, as required.

The Register of Members' Interests

- 3.40 The Localism Act abolishes the concepts of personal and prejudicial interests. Instead, regulations will define a new interest called "Disclosable Pecuniary Interests" (DPIs). The Monitoring Officer is required to maintain a register of interests, which must be available for inspection and available on the Council's website. The Monitoring Officer is also responsible for maintaining the register for Parish Councils, which also have to be open for inspection at the District Council offices and on the District Council website.
- 3.41 At present we do not know what Disclosable Pecuniary Interests will comprise, but they are likely to be broadly equivalent to the current prejudicial interests as the Secretary of State has yet to issue the necessary regulations.
- 3.42 *To comply with the Localism Act the Monitoring Officer is required to prepare and maintain a new Register of Members' Interests for both District and Parish Councillors.*
- 3.43 It is therefore proposed to present to Council in June proposals for a new Register of Interests.
- 3.44 IT IS RECOMMENDED to request the Monitoring Officer, following receipt of the regulations to be issued by the Secretary of State, to present to Council in June a report containing proposals for a new Register of Interests.

Disclosure of Interests and Withdrawal from Meetings

- 3.45 As set out above DPIs are likely to be broadly equivalent to prejudicial interests, but with important differences.
- 3.46 The duty to disclose arises whenever a member is present at a meeting of the authority or of any committee, sub-committee, joint committee or joint sub-committee, has a DPI in any matter to be considered at the meeting and is aware they have an interest
- 3.47 If a member has a DPI in any matter he/she *must not*:
- Participate in any discussion of the matter at the meeting. The Act does not define “discussion” but this would appear to preclude making representations as currently permitted under paragraph 12(2) of the model Code of Conduct; or
 - Participate in any vote on the matter
- unless he/she has obtained a dispensation allowing him/her to speak and/or vote.
- 3.48 Failure to comply with the above requirements becomes a criminal offence.
- 3.49 Members will notice there is no requirement to withdraw from the meeting room under the new provisions in the Act. However, the Act provides that this can be covered by Standing Orders.
- 3.50 *Council must decide whether to continue with current arrangements which require a Member with a prejudicial interest to withdraw from the meeting and apply similar requirements upon members with a new style ‘Disclosable Pecuniary Interest. (It is anticipated that the new style Disclosable Pecuniary Interest will be broadly similar to the current Prejudicial Interest.)*
- 3.51 IT IS RECOMMENDED that the Council’s Constitution be revised to provide for a member to withdraw from the meeting room, including the public gallery, during the whole of consideration of any item of business in which he or she has a DPI, except where he or she is permitted to remain as a result of a dispensation.

Dispensations

- 3.52 As members will recall from the report in February the grounds for seeking a dispensation are significantly changed by the Localism Act.
- 3.53 *Council must decide what arrangements would be appropriate for granting dispensations.*
- 3.54 IT IS RECOMMENDED that the Monitoring Officer be appointed the proper officer for the receipt of applications for dispensation and that the Council delegate all necessary powers to determine applications for dispensation to the Monitoring Officer, Standards Committee or any sub-committee appointed for the purpose.

It is further proposed that the Dispensation Scheme attached as Appendix H be approved and all necessary powers delegated to the Monitoring Officer and relevant

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committee and sub-committees to enable the procedure to operate and minor revisions to the scheme to be made, as required.

Constitution – other changes

- 3.55 The Constitution currently contains a Protocol in relation to the role and function of the Council's Monitoring Officer. Revision of this protocol is required to provide for the new roles and responsibilities delegated under the Localism Act 2011 particularly in relation to the establishment and maintenance of Registers of Interests for district and parish councillors.
- 3.56 It is therefore proposed that the revised Protocol as set out in Appendix I be approved.
- 3.57 Also under current provisions the Standards Committee has responsibility for exercising powers in Section 3A of the Local Government and Housing Act 1989 in relation to the grant and supervision of exemption from political restriction in relation to officers. The Localism Act 2011 Schedule 4 will make amendments to these provisions which will in effect make the head of the paid service responsible for such matters in the future in consultation with the Monitoring Officer. It will therefore be necessary to revise the Scheme of Delegation to Officers in relation to the Chief Executive accordingly. See Appendix J.
- 3.58 Appendix J also contains two further revisions to the Officer Scheme of Delegation documenting the appointment of the Monitoring Officer as Proper Officer under the Localism Act 2011 for the receipt of applications for a dispensation from the restrictions on participation in meetings and seeking resolution of complaints alleging a breach of the code of conduct for members in relation to district or parish councillors.

4 Next Steps

- 4.1 Determining how to deal with the standards regime required by the Localism Act is a difficult task. As Members will see from the earlier paragraphs in this report and in particular Chapter 7 whilst the Bill has now received the royal assent regulations are still awaited in relation to 'disclosable pecuniary interests'. Transitional arrangements are also being discussed by the government as to eligibility to be appointed as an Independent Person.
- 4.2 This report seeks to provide up to date information on the Localism Act provisions in relation to standards and agree the next phase of steps to enable the new standards regime to be established.
- 4.3 A subsequent report or reports will be presented to Council to deal with approval of proposals for the formal appointment of the Independent Person and a Reserve, formal approval of the code of conduct and provisions in relation to the registration of interests.

5 Outcome of Consultations

- 5.1 Corporate Management Team have been consulted on this report. All Members of the Standards Committee have been consulted on this report.

- 5.2 Informal consultation has taken place with county, district and borough councils. They have indicated that arrangements for standards provision within their authorities are likely to remain broadly the same as at present which should retain consistency across the county.
- 5.3 The Chairman's Standards' Liaison Group met on 3 April 2012 and is in agreement with the recommendations proposed.

6 Other Courses of Action Considered but Rejected

- 6.1 Under the Localism Act the Council is under a duty to promote and maintain high standards of conduct amongst its members, approve a new code of conduct, put in place "arrangements" to deal with standards complaints, appoint an Independent Person(s), put in place provisions regarding interests and approve a Dispensation Scheme.
- 6.2 To do otherwise would be a breach of the Council's obligations under the Localism Act and leave the Council vulnerable to legal challenge.

7 Staffing Consequences

- 7.1 Significant staff time will be required to re-build a standards regime under the government's localist agenda following repeal of the current provisions. It is hoped to carry out this work within existing staffing structures. An update will be provided at the Council meeting in June.

8 Financial Consequences

- 8.1 Savings have already been agreed following the reduction of Independent Members from four to two of £2390 from the members allowance budget.
- 8.2 A further reduction will be secured by reducing the number of parish representatives from four to two of £1870 again from the members allowance budget.

9 Other Consequences of the Proposed Action

- 9.1 Other consequences of the proposed action are set out in Appendix 1.

Appendix 1

Consequences of the Proposed Action

<p>What are the risks associated with the proposal?</p> <p>Risk Assessment attached No</p>	<p>Reducing the current scope of the Code of Conduct or removing a dedicated committee may create a risk to the District Council that the standards of councillor behaviour could not be clearly defined and could therefore be harder to hold to account, which could lead to reputational damage to the District Council.</p>
<p>How will the proposal help to reduce Crime and Disorder?</p>	<p>Creating the right climate for decision making and ensuring adequate probity measures are in place will ensure that the Council's duty to seek to reduce crime and disorder is properly taken into account.</p>
<p>How will the proposal help to promote Human Rights?</p>	<p>There is a positive obligation on the Council under the Human Rights Act 1998 to have regard for human rights. The convention rights are scheduled in the Act. The creation of the right climate for decision making and adequate probity measures will ensure that human rights are regarded and in some cases enhanced.</p> <p>Recruiting an Independent Person(s) and retaining an enforceable code of conduct should support the Council's obligation to avoid interference with the human rights of any individual.</p>
<p>What is the impact of the proposal on Equality and Diversity?</p> <p>Equalities Impact Assessment attached Yes/No/Not relevant</p>	<p>The Code of Conduct sets out clear standards of behaviour for members and includes the expectation of respect for others defined in the prescribed General Principles as:</p> <p>"Members should promote equality by not discriminating unlawfully against any person, and by treating people with respect, regardless of their race, age, religion, gender, sexual orientation or disability".</p> <p>Maintaining an enforceable Code of Conduct will enable the Council to continue to have a positive obligation upon members to eliminate unlawful discrimination.</p>
<p>How will the proposal help to promote Sustainability?</p>	<p>Where possible electronic means of communication will be used.</p>

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THE CONSTITUTION

Part 2

Article 9 – The Standards Committee

9.1 Standards Committee

The Council will establish a Standards Committee.

9.2 Composition

(a) **Membership.** The Standards Committee will be composed of:

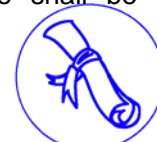
- ~~seven~~ members of the Council, reflecting the political balance of the Council including:
 - Chairman of the Council
 - ~~one member of the Executive (but no more than one).~~
 - ~~to co-opt two~~ persons who are not councillors or officers of the Council or any other body having a standards committee (~~Independent Persons~~) ~~to advise the committee on standards' matters~~;
 - ~~to co-opt two~~ members of parish councils in the District (~~Parish Representatives~~) ~~to advise the committee on parish matters~~.

(b) **Independent Persons.** ~~Independent persons~~ will ~~not be~~ entitled to vote at meetings.

(c) **Parish Representatives.** ~~Parish representatives~~ will ~~not be~~ entitled to vote at meetings. At least one parish ~~representative~~ ~~should~~ be present when matters relating to parish councils or their members are being considered although a Parish ~~Representative~~ ~~must~~ not ~~advise~~ in any matter affecting the Parish Council or Parish Councillors of the parish of which he or she is a parish councillor.

(d) Local Determinations Sub-Committee. The Committee shall appoint a Local Determinations Sub-Committee ~~comprising at least three members of the Standards Committee~~ to make local determinations. The members of the Sub-Committee shall be

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- Deleted: (d) **District Council Members.** At least one District Councillor must be present at each meeting of the Committee.¶
- Deleted: (e) **Chairing the Committee.** The Committee and any sub committee will be chaired by an Independent Member.¶
- Deleted: (f) **Parish Councils sub-committee.** The Standards Committee may appoint a sub-committee to exercise the function set out in Articles 9.3 (g) and (h) below. The sub-committee will include at least one Independent Member, one Parish Member and one District Councillor.¶
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selected by the Monitoring Officer after having consulted the Chairman of the Committee.

- (e) **Other sub-committees.** The Committee may appoint any other sub-committee(s) from among the members of the Committee for the purposes of discharging any of the Committee's functions whether or not to the exclusion of the Committee. The members of the Sub-Committee shall be selected by the Monitoring Officer after having consulted the Chairman of the Committee.

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9.3 Role and Function

The Standards Committee will have the following roles and functions:

- (a) promoting and maintaining high standards of conduct by councillors and co-opted members;
- (b) assisting the councillors and co-opted members to observe the Code of Members' Conduct;
- (c) advising the Council on the adoption, revision **or replacement** of the Code of Members' Conduct;
- (d) monitoring the operation of the Code of Members' Conduct;
- (e) advising, training or arranging to train councillors and co-opted members on matters relating to the Code of Members' Conduct;
- (f) granting dispensations to councillors and co-opted members from requirements relating to interests set out in the Code of Members' Conduct; **(NOTE this will also be delegated to the Monitoring Officer who it is hoped will be in a position to deal with most applications for dispensation thereby avoiding the need for the convening of the Standards committee or sub-committee to deal with the application).**
- (g) dealing with any **allegations that a member or co-opted member of the District Council has failed or may have failed to comply with the code of conduct in accordance with the provisions of the Localism Act 2011 and any relevant regulations** (local assessment, review, determinations or local investigations);
- (h) **to make arrangements for the appointment of one independent person and one reserve independent person to advise the Committee particularly on investigations into allegations that a member has breached the code of conduct;**
- (i) **to co-opt in an advisory capacity only any person who is an independent person of another local authority to advise the Standards Committee or any sub-committee on such terms as the Standards Committee may determine and agree with the person concerned and the other local authority and in accordance with the Localism Act 2011 and any relevant regulations;**

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- (j) to make arrangements for the appointment of two parish representatives to advise the Committee on parish matters;
- (k) to receive quarterly reports from the Monitoring Officer on the local resolution and assessment of allegations of breach of the Code of Members' Conduct;
- (l) to support the Monitoring Officer in the exercise of the officer's ethical standards functions, in particular the duty to establish and maintain registers of interests for the Council.
- (m) any other function imposed by statute;
- (n) the exercise of (g), (k), (l) and (m) above in relation to the parish councils in its area and the members of those parish councils.

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APPENDIX B

Part 3C

(Article 8)

SCHEME OF DELEGATION TO COMMITTEES

2. TERMS OF REFERENCE OF AND FUNCTIONS DELEGATED TO COMMITTEES

2.6. Standards Committee

Membership:	(a) Seven members of the Council (, reflecting the political balance of the Council including the Chairman of the Council, one member of the Executive (but no more than one), and (b) two persons independent of the Council co-opted to assist the committee in an advisory capacity only (Independent Persons) ; and (c) two parish councillors co-opted to assist the committee in an advisory capacity only (Parish Representative) .	Deleted: Six Deleted: broadly Deleted: or the Vice Chairman or immediate past Chairman Deleted: at least Deleted: at least two non- Deleted: executive members of the Council); Deleted: , Deleted: at least three Deleted: four
Matters delegated to the Committee:	To perform the functions set out in the Localism Act 2011 Chapter 7 and any regulations made under the Act .	Deleted: the Local Government Act 2000 Part III and any regulations made under the Act and in particular those set out in Sections 54 to 55, 57A to 58 and 64 to 67



APPENDIX C

Part 5A MEMBERS' CODE OF CONDUCT

EXPLANATORY NOTE

(This note is not part of the Code)

The code of members' conduct sets out the conduct which is expected of members and co-opted members of the authority.

Paragraph 1 of the Code provides that the Code applies to any member of Horsham District Council and that it is the responsibility of each member to comply with the Code.

Paragraph 2 of the Code provides that the Code applies whenever a member is acting in his or her official capacity, and in relation to conduct in a member's private capacity the code only applies where such conduct has resulted in a criminal conviction. Additionally, where a member is acting as a representative of Horsham District Council, he or she must continue to observe the authority's code, unless he or she is subject to another relevant authority's code, or unless (in relation to any other body) it conflicts with any other legal obligations.

Paragraph 3 of the Code provides that members must treat others with respect and not do anything which may cause their authority to breach equality legislation, or which compromises the impartiality of those who work for the authority or bully anyone or intimidate persons involved in code of conduct cases.

Paragraph 4 of the Code provides that members must not without consent disclose confidential information they have acquired and must not prevent others from gaining access to information to which they are entitled.

Paragraph 5 of the Code provides that a member must not conduct himself or herself in a manner which could bring his or her authority into disrepute.

Paragraph 6 of the Code provides that a member must not use his or her position improperly to gain an advantage or confer a disadvantage and that when using or authorising the use of the authority's resources, he or she must act in accordance with the authority's reasonable requirements, must not permit those resources to be used for political purposes and must have regard to the Local Authority Code of Publicity.

Paragraph 7 of the Code provides that a member must have regard to advice given by the chief finance officer and monitoring officer and must give reasons for decisions made.

Paragraph 8 of the Code provides a list of matters which constitute a personal interest.

Paragraph 9 of the Code provides that generally a member with a personal interest in any business of his or her authority must disclose that interest at any meeting at which the business is considered.



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Paragraph 10 of the Code provides that generally a member with a personal interest also has a prejudicial interest if the interest could be regarded by a member of the public as so significant that it is likely to prejudice his or her judgement of the public interest. The paragraph provides that in specified circumstances a member may regard himself as not having a prejudicial interest.

Paragraph 11 of the Code provides that a member who was involved in making a decision or taking action on a matter must not be involved in the overview and scrutiny committee's consideration of that decision or action.

Paragraph 12 of the Code provides that a member with a prejudicial interest must, unless, for example, he or she is making representations and members of the public are also allowed to make representations on that matter, or he or she has obtained a dispensation, withdraw from any meetings at which the business is being considered, and must not improperly influence decisions in relation to the business.

Paragraph 13 of the Code provides that a member must notify the monitoring officer of his or her personal interests and any change to those interests must also be notified.

Paragraph 14 of the Code provides that a member may notify the monitoring officer of any sensitive information the availability of which to the public creates, or is likely to create, a serious risk that the member or a person who lives with him or her may be subjected to violence or intimidation.



APPENDIX C



**Horsham
District
Council**

MEMBERS' CODE OF CONDUCT

General Provisions

1. (1) This Code of Members' Conduct is made under section 51 of the Local Government Act 2000 and was adopted by Horsham District Council on 27th June 2007.
 - (2) This Code applies to **you** as a member of an authority.
 - (3) You should read this Code together with the general principles prescribed by the Secretary of State and set out in Part 4.
 - (4) It is your responsibility to comply with the provisions of this Code.
 - (5) In this Code—
 - "meeting" means any meeting of—
 - (a) the authority;
 - (b) the executive of the authority;
 - (c) any of the authority's or its executive's committees, sub-committees, joint committees, joint sub-committees or area committees;
 - "member" includes a co-opted member and an appointed member;
 - "the authority" or "your authority" means Horsham District Council.
 - (6) References to the authority's monitoring officer and the authority's standards committee shall be read, respectively, as references to the monitoring officer and the standards committee of Horsham District Council which has functions in relation to the parish council for which it is responsible under section 55(12) of the Local Government Act 2000.

Scope

2. (1) Subject to sub-paragraphs (2) to (5), you must comply with this Code whenever you—
 - (a) conduct the business of your authority (which, in this Code, includes the business of the office to which you are elected or appointed); or
 - (b) act, claim to act or give the impression you are acting as a



Appendix C

representative of your authority,

and references to your official capacity are construed accordingly.

(2) Subject to sub-paragraphs (3) and (4), this Code does not have effect in relation to your conduct other than where it is in your official capacity.

(3) In addition to having effect in relation to conduct in your official capacity, paragraphs 3(2)(c), 5 and 6(a) also have effect, at any other time, where that conduct constitutes a criminal offence for which you have been convicted.

(4) Conduct to which this Code applies (whether that is conduct in your official capacity or conduct mentioned in sub-paragraph (3)) includes a criminal offence for which you are convicted (including an offence you committed before the date you took office, but for which you are convicted after that date).

(5) Where you act as a representative of your authority—

(a) on another relevant authority, you must, when acting for that other authority, comply with that other authority's code of conduct; or

(b) on any other body, you must, when acting for that other body, comply with your authority's code of conduct, except and insofar as it conflicts with any other lawful obligations to which that other body may be subject.

General obligations

3. (1) You must treat others with respect.

(2) You must not—

(a) do anything which may cause your authority to breach any of the equality enactments (as defined in section 33 of the Equality Act 2006);

(b) bully any person;

(c) intimidate or attempt to intimidate any person who is or is likely to be—

(i) a complainant,

(ii) a witness, or

(iii) involved in the administration of any investigation or proceedings,

in relation to an allegation that a member (including yourself) has failed to comply with his or her authority's code of conduct; or

(d) do anything which compromises or is likely to compromise the impartiality of those who work for, or on behalf of, your authority.



APPENDIX C

4. You must not—

(a) disclose information given to you in confidence by anyone, or information acquired by you which you believe, or ought reasonably to be aware, is of a confidential nature, except where—

(i) you have the consent of a person authorised to give it;

(ii) you are required by law to do so;

(iii) the disclosure is made to a third party for the purpose of obtaining professional advice provided that the third party agrees not to disclose the information to any other person; or

(iv) the disclosure is—

(aa) reasonable and in the public interest; and

(bb) made in good faith and in compliance with the reasonable requirements of the authority; or

(b) prevent another person from gaining access to information to which that person is entitled by law.

5. You must not conduct yourself in a manner which could reasonably be regarded as bringing your office or authority into disrepute.

6. You

(a) must not use or attempt to use your position as a member improperly to confer on or secure for yourself or any other person, an advantage or disadvantage; and

(b) must, when using or authorising the use by others of the resources of your authority—

(i) act in accordance with your authority's reasonable requirements;

(ii) ensure that such resources are not used improperly for political purposes (including party political purposes); and

(c) must have regard to any applicable Local Authority Code of Publicity made under the Local Government Act 1986.

7. (1) When reaching decisions on any matter you must have regard to any relevant advice provided to you by—

(a) your authority's chief finance officer; or

(b) your authority's monitoring officer,

where that officer is acting pursuant to his or her statutory duties.



Appendix C

(2) You must give reasons for all decisions in accordance with any statutory requirements and any reasonable additional requirements imposed by your authority.

Part 2

Interests

Personal interests

8. (1) You have a personal interest in any business of your authority where either
- (a) it relates to or is likely to affect
 - (i) any body of which you are a member or in a position of general control or management and to which you are appointed or nominated by your authority;
 - (ii) any body
 - (aa) exercising functions of a public nature;
 - (bb) directed to charitable purposes; or
 - (cc) one of whose principal purposes includes the influence of public opinion or policy (including any political party or trade union),of which you are a member or in a position of general control or management;
 - (iii) any employment or business carried on by you;
 - (iv) any person or body who employs or has appointed you;
 - (v) any person or body, other than a relevant authority, who has made a payment to you in respect of your election or any expenses incurred by you in carrying out your duties;
 - (vi) any person or body who has a place of business or land in your authority's area, and in whom you have a beneficial interest in a class of securities of that person or body that exceeds the nominal value of £25,000 or one hundredth of the total issued share capital (whichever is the lower);
 - (vii) any contract for goods, services or works made between your authority and you or a firm in which you are a partner, a company of which you are a remunerated director, or a person or body of the description specified in paragraph (vi);
 - (viii) the interests of any person from whom you have received a gift or hospitality with an estimated value of at least £25;



APPENDIX C

(ix) any land in your authority's area in which you have a beneficial interest;

(x) any land where the landlord is your authority and you are, or a firm in which you are a partner, a company of which you are a remunerated director, or a person or body of the description specified in paragraph (vi) is, the tenant;

(xi) any land in the authority's area for which you have a licence (alone or jointly with others) to occupy for 28 days or longer; or

(b) a decision in relation to that business might reasonably be regarded as affecting your well-being or financial position or the well-being or financial position of a relevant person to a greater extent than the majority of

(i) (in the case of authorities with electoral divisions or wards) other council tax payers, ratepayers or inhabitants of the electoral division or ward, as the case may be, affected by the decision;

(ii) (in the case of the Greater London Authority) other council tax payers, ratepayers or inhabitants of the Assembly constituency affected by the decision; or

(iii) (in all other cases) other council tax payers, ratepayers or inhabitants of your authority's area.

(2) In sub-paragraph (1)(b), a relevant person is

(a) a member of your family or any person with whom you have a close association; or

(b) any person or body who employs or has appointed such persons, any firm in which they are a partner, or any company of which they are directors;

(c) any person or body in whom such persons have a beneficial interest in a class of securities exceeding the nominal value of £25,000; or

(d) any body of a type described in sub-paragraph (1)(a)(i) or (ii).

Disclosure of personal interests

9. (1) Subject to sub-paragraphs (2) to (7), where you have a personal interest in any business of your authority and you attend a meeting of your authority at which the business is considered, you must disclose to that meeting the existence and nature of that interest at the commencement of that consideration, or when the interest becomes apparent.

(2) Where you have a personal interest in any business of your authority which relates to or is likely to affect a person described in paragraph 8(1)(a)(i) or 8(1)(a)(ii)(aa), you need only disclose to the meeting the existence and nature of that interest when you address the meeting on that business.



Appendix C

(3) Where you have a personal interest in any business of the authority of the type mentioned in paragraph 8(1)(a)(viii), you need not disclose the nature or existence of that interest to the meeting if the interest was registered more than three years before the date of the meeting.

(4) Sub-paragraph (1) only applies where you are aware or ought reasonably to be aware of the existence of the personal interest.

(5) Where you have a personal interest but, by virtue of paragraph 14, sensitive information relating to it is not registered in your authority's register of members' interests, you must indicate to the meeting that you have a personal interest, but need not disclose the sensitive information to the meeting.

(6) Subject to paragraph 12(1)(b), where you have a personal interest in any business of your authority and you have made an executive decision in relation to that business, you must ensure that any written statement of that decision records the existence and nature of that interest.

(7) In this paragraph "executive decision" is to be construed in accordance with any regulations made by the Secretary of State under section 22 of the Local Government Act 2000.

Prejudicial interest generally

10. (1) Subject to sub-paragraph (2), where you have a personal interest in any business of your authority you also have a prejudicial interest in that business where the interest is one which a member of the public with knowledge of the relevant facts would reasonably regard as so significant that it is likely to prejudice your judgement of the public interest.

(2) You do not have a prejudicial interest in any business of the authority where that business—

(a) does not affect your financial position or the financial position of a person or body described in paragraph 8;

(b) does not relate to the determining of any approval, consent, licence, permission or registration in relation to you or any person or body described in paragraph 8; or

(c) relates to the functions of your authority in respect of—

(i) housing, where you are a tenant of your authority provided that those functions do not relate particularly to your tenancy or lease;

(ii) school meals or school transport and travelling expenses, where you are a parent or guardian of a child in full time education, or are a parent governor of a school, unless it relates particularly to the school which the child attends;

(iii) statutory sick pay under Part XI of the Social Security Contributions and Benefits Act 1992, where you are in receipt of, or



APPENDIX C

are entitled to the receipt of, such pay;

(iv) an allowance, payment or indemnity given to members;

(v) any ceremonial honour given to members; and

(vi) setting council tax or a precept under the Local Government Finance Act 1992.

Prejudicial interests arising in relation to overview and scrutiny committees

11. You also have a prejudicial interest in any business before an overview and scrutiny committee of your authority (or of a sub-committee of such a committee) where—

(a) that business relates to a decision made (whether implemented or not) or action taken by your authority's executive or another of your authority's committees, sub-committees, joint committees or joint sub-committees; and

(b) at the time the decision was made or action was taken, you were a member of the executive, committee, sub-committee, joint committee or joint sub-committee mentioned in paragraph (a) and you were present when that decision was made or action was taken.

Effect of prejudicial interests on participation

12. (1) Subject to sub-paragraph (2), where you have a prejudicial interest in any business of your authority—

(a) you must withdraw from the room or chamber where a meeting considering the business is being held—

(i) in a case where sub-paragraph (2) applies, immediately after making representations, answering questions or giving evidence;

(ii) in any other case, whenever it becomes apparent that the business is being considered at that meeting;

unless you have obtained a dispensation from your authority's standards committee;

(b) you must not exercise executive functions in relation to that business; and

(c) you must not seek improperly to influence a decision about that business.

(2) Where you have a prejudicial interest in any business of your authority, you may attend a meeting (including a meeting of the overview and scrutiny committee of your authority or of a sub-committee of such a committee) but only for the purpose of making representations, answering questions or giving evidence relating to the business, provided that the public are also allowed to attend the meeting for the same purpose, whether under a statutory right or otherwise.



Appendix C

Part 3

Registration of Members' Interests

Registration of members' interests

13. (1) Subject to paragraph 14, you must, within 28 days of

(a) this Code being adopted by or applied to your authority; or

(b) your election or appointment to office (where that is later),

register in your authority's register of members' interests (maintained under section 81(1) of the Local Government Act 2000) details of your personal interests where they fall within a category mentioned in paragraph 8(1)(a), by providing written notification to your authority's monitoring officer.

(2) Subject to paragraph 14, you must, within 28 days of becoming aware of any new personal interest or change to any personal interest registered under paragraph (1), register details of that new personal interest or change by providing written notification to your authority's monitoring officer.

Sensitive information

14. (1) Where you consider that the information relating to any of your personal interests is sensitive information, and your authority's monitoring officer agrees, you need not include that information when registering that interest, or, as the case may be, a change to that interest under paragraph 13.

(2) You must, within 28 days of becoming aware of any change of circumstances which means that information excluded under paragraph (1) is no longer sensitive information, notify your authority's monitoring officer asking that the information be included in your authority's register of members' interests.

(3) In this Code, "sensitive information" means information whose availability for inspection by the public creates, or is likely to create, a serious risk that you or a person who lives with you may be subjected to violence or intimidation.



APPENDIX C

Part 4

THE GENERAL PRINCIPLES

The general principles governing your conduct under the Relevant *Authorities (General Principles) Order 2001* are set out below:

Selflessness

1. Members should serve only the public interest and should never improperly confer an advantage or disadvantage on any person.

Honesty and Integrity

2. Members should not place themselves in situations where their honesty and integrity may be questioned, should not behave improperly and should on all occasions avoid the appearance of such behaviour.

Objectivity

3. Members should make decisions on merit, including when making appointments, awarding contracts, or recommending individuals for rewards or benefits.

Accountability

4. Members should be accountable to the public for their actions and the manner in which they carry out their responsibilities, and should co-operate fully and honestly with any scrutiny appropriate to their particular office.

Openness

5. Members should be as open as possible about their actions and those of their authority, and should be prepared to give reasons for those actions.

Personal Judgement

6. Members may take account of the views of others, including their political groups, but should reach their own conclusions on the issues before them and act in accordance with those conclusions.

Respect for Others

7. Members should promote equality by not discriminating unlawfully against any person, and by treating people with respect, regardless of their race, age, religion, gender, sexual orientation or disability. They should respect the impartiality and integrity of the authority's statutory officers, and its other employees.



Appendix C

Duty to Uphold the Law

8. Members should uphold the law and, on all occasions, act in accordance with the trust that the public is entitled to place in them.

Stewardship

9. Members should do whatever they are able to do to ensure that their authorities use their resources prudently and in accordance with the law.

Leadership

10. Members should promote and support these principles by leadership, and by example, and should act in a way that secures or preserves public confidence.



CODE OF MEMBERS' CONDUCT ARRANGEMENTS FOR DEALING WITH STANDARDS ALLEGATIONS UNDER THE LOCALISM ACT 2011 - GUIDANCE FOR POTENTIAL COMPLAINANTS

Introduction

1. ~~It is expected that elected and co-opted members of the Council and the 32 parish councils within the district uphold the highest standards of public office. However, in the event that there is a complaint it is important that this is handled effectively to ensure public confidence is maintained.~~
2. ~~Section 28(6) and (7) of the Localism Act 2011 requires the Council to put in place "arrangements" under which allegations that a member or co-opted member of the district council or of a parish council within the district has failed to comply with the relevant authority's code of conduct when they are acting in that capacity (a) can be investigated and (b) decisions made on such allegations.~~
3. ~~These "arrangements" must provide for the authority to appoint at least one Independent Person whose views (a) must be sought, and taken into account by the authority before it takes a decision on an allegation which it has decided shall be investigated (b) may be sought by the authority at any other stage and (c) may be sought by a member or co-opted member of the authority or of a parish council if that person's behaviour is the subject of an allegation:~~
4. ~~The purpose of this Guidance is to comply with the requirements of the Localism Act 2011 and to explain the "arrangements" which are in place to~~ to make a complaint about an elected or co-opted Member of Horsham District Council or an elected ~~or~~ co-opted Member of the 32 parish councils in Horsham District and what happens if you make a

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complaint¹. A complaint must comprise a breach **by the member** of the relevant council's Code of Members' Conduct **when acting in that capacity**. Complaints which are trivial, simply malicious, vexatious, politically-motivated or tit-for-tat are likely to be rejected. If, having read this Guidance, you think that your complaint can be resolved through informal means rather than following through this complaints procedure, please contact the Monitoring Officer.

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- 5. Overall responsibility for overseeing compliance with the Codes of Members' Conduct is that of Horsham District Council's Standards Committee². The Standards Committee comprises **seven** District Councillors, **In addition the Council has co-opted two** parish council representatives and **two** persons independent of any council **to advise the committee but who are not entitled to vote**. The Committee has three sub-committees: the Local Assessment Sub-Committee, the Local Review Sub-Committee and the Local Determinations Sub-Committee, **The Standards Committee and its sub-committees are advised and supported by Horsham District Council's Monitoring Officer.**

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Deleted: each of which is chaired by an independent member, and includes a parish representative when parish matters are concerned.

Interpretation

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6 'Member' means the member of the authority who is the subject of the allegation made by the complainant, unless otherwise stated.

7 'Investigating Officer' means the person appointed by the Monitoring Officer to undertake an investigation and may include the Monitoring Officer and his or her representative.

8 'the Matter' is the subject matter of the allegation.

9 'the Standards Committee' refers to the Standards Committee or to any sub-committee to which it has delegated assessment of complaints, review of decisions or the conduct of the hearing unless the context indicates that it refers only to the standards committee itself.

10 'Independent Person' means a person appointed by the Council under the Localism Act 2011 s 28(7) to advise the standards committee and its sub-committees and who has the functions set out in the Localism Act 2011 s 28(7).

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11 'Parish Representative' means a parish councillor appointed by the Council to advise the standards committee and its sub-committees in relation to cases involving parish councillors.

12 'Monitoring Officer' means a statutory officer appointed by the Council under the Local Government and Housing Act 1989 ss 5 5A who has a role in the promotion and maintenance of high standards of conduct within local authorities and his or her deputy or representative.

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The assessment of complaints

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13. The Local Assessment Sub-Committee has initial responsibility for considering written complaints by way of allegations against Members for breach of the relevant Code of Members' Conduct. This is known as assessment. The purpose of assessment is to determine whether or not on the basis of information supplied by the complainant, if the matter were proven, it would amount to a breach of the code of members' conduct. No investigation or hearings are conducted at this stage.

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14. The Independent Person will be consulted on the allegation and whether in their view it could amount to a breach of the code of conduct. The Parish Representative will also be consulted in relation to complaints concerning parish councillors. Their views will be included in the Monitoring Officer's report to the Local Assessment Sub-Committee.

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15. The Monitoring Officer will notify the Member subject to the complaint that a complaint has been made.

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16. Following consultation with the Independent Person (and the Parish Representative as appropriate) the Local Assessment Sub-Committee will make a decision as to whether the complaint merits formal investigation. This decision will normally be made within 6 weeks of receipt of your complaint. You will be advised of the decision and the reasons for that decision.

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17. If the Local Assessment Sub-Committee requires further information in order to reach a decision they may come back to you for such information and may request information from the Member

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against whom the complaint is directed. The Local Assessment Sub-Committee may also inform the parish council of your complaint and seek views of the parish council before deciding whether the complaint merits formal investigation if the complaint involves a parish councillor.

18. In appropriate cases the Local Assessment Sub-Committee may direct the Monitoring Officer to seek to resolve the complaint informally without the need for a formal investigation. Such informal resolution may involve the member accepting that his or her conduct was unacceptable and offering an apology or other remedial action. Where the Member makes a reasonable offer of local resolution but you are not willing to accept that offer, the Local Assessment Sub-Committee will take account of this in deciding whether the complaint merits formal investigation.

19. If the complaint identifies criminal conduct or breach of other regulation by any person the Local Assessment Sub-Committee has power to call in the police and other regulatory agencies.

The Codes of Members' Conduct

20. Copies of the relevant council's Code of Members' Conduct are available, in the case of Horsham District Council, at the Council's offices, from the Council's Monitoring Officer or at its website via the following link: http://www.horsham.gov.uk/files/Part_5A_Code_of_Conduct_Issue_24.pdf Parish councils' Codes of Members' Conduct are available from the relevant parish clerk or (where available) the parish council's website.

Making complaints

21. Complaints by way of allegations must be made in writing and should be on the official complaint form³ which sets out all the necessary information. This complaints procedure is separate from Horsham District Council's and the parish councils' complaints procedures which are directed at corporate and service failings. More information about Horsham District Council's corporate complaints procedure can be accessed at <http://www.horsham.gov.uk/council/3144.aspx> or by contacting:

The Complaints & Information Officer
Horsham District Council
Park North

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North Street
Horsham RH12 1RL

☎ 01403 215470
✉ yoursay@horsham.gov.uk

22. A valid member complaint must relate to the conduct of a named individual Member while in office since **1 July 2012**. The Local Assessment Sub-Committee cannot deal with complaints about the District Council or parish councils, their staff or services or about an individual's conduct before he or she was elected, co-opted or appointed or after he or she ceased to be a Member or to a period before the adoption of the statutory Codes of Members' Conduct **on 1 July 2012**.

23. Once you have completed your complaint form you should submit it together with any background information and documents to the Monitoring Officer (see contact details at paragraph **67**).

The handling of complaints

24. After making sure that the complaint is valid, i.e. it satisfies the requirements of paragraphs **21-22**, the Monitoring Officer will submit your complaint to the Local Assessment Sub-Committee. **Whilst the Monitoring Officer or the Local Assessment Sub-Committee may request information from the Member against whom the complaint is directed or the parish council (if relevant), the Local Assessment Sub-Committee is entitled to** rely on the information you have provided, so it is important that the information is full and complete.

Openness

25. Your **name and a summary of your complaint may be sent to the Member and the clerk to the parish council (where the Member is a parish councillor). If you wish your name and the details of the complaint to remain confidential please indicate this on the complaint form. You will need to demonstrate exceptional circumstances where to disclose** would be contrary to the public interest or would prejudice a person's ability to investigate the allegation and may include where you believe:

25.1 that you may be victimised or harassed by the Member(s) against whom you are submitting a written complaint (or by a person associated with him or her); or

25.2 that you may receive less favourable treatment from the Council because of the seniority of the Member against whom you are submitting a written complaint in terms of any

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Deleted: personal details and the details of your complaint remain confidential to the Local Assessment Sub-Committee and the Monitoring Officer until after the complaint has been assessed by the Local Assessment Sub-Committee. After that time your name and the details of the complaint will become public, unless there are very exceptional circumstances, and a summary of your complaint will be sent to the Member(s) and the clerk to the parish council (where the Member is a parish councillor).

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- existing Council service provision or any tender/contract that you may have or are about to submit to the Council; **or**
- 25.3 that you are an officer who works closely with the member against whom the allegation is made and has a reasonable belief that you may be adversely affected in your employment if your identity is disclosed,**

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How the Local Assessment Sub-Committee assesses your complaint

26. In reaching its decisions on your complaint the Local Assessment Sub-Committee will take into account the following considerations, depending on the nature of your complaint and the need to adopt a proportionate response:

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26.1 the extent to which the Member is alleged to have failed to treat others with respect;

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26.2 the extent to which the Member is alleged to have acted in a way that may cause the authority to breach an equality enactment;

26.3 whether the allegation relates to bullying, intimidating, or attempting to intimidate a person involved in an allegation against the Member;

26.4 whether in disclosing confidential information the Member failed to take or to heed advice;

26.5 the implications for public perception or the reputation of the Council;

26.6 the implications for staff relations;

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26.7 the seniority or position of influence of the Member and public trust and confidence;

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26.8 the consequences or the likely consequences of the Member's alleged actions;

26.9 the extent to which the Member is alleged to have used his or her position as a member *improperly* to confer or secure an advantage or disadvantage;

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26.10 the extent to which the Member is alleged to have misused or abused the resources of the Council;

26.11 the detriment caused by acting against advice when reaching decisions;

26.12 the extent to which a failure to register or to declare interests resulted from a failure or refusal to seek or to follow advice;

26.13 the matter of complaint has already been the subject of a previous investigation or of an investigation by another regulator, e.g. the Local Government Ombudsman or the District Auditor, or the subject of proceedings in court;

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26.14 that the complaint is about something that happened so long ago that there would be little public benefit in taking action now;

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- 26.15 that the complaint is too trivial to warrant further action;
- 26.16 that the complaint appears to be simply malicious, vexatious, politically motivated or tit-for-tat.;
- 26.17 the public benefit in directing an investigation or other steps;
- 26.18 the costs and officer and Member time which could incurred on an investigation or other steps.
- 26.19 **whether there is enough information currently available to justify a decision to refer the matter for investigation or to seek an informal resolution;**
- 26.20 **whether the complaint is about someone who has died, resigned, is seriously ill or is no longer a member of the Council concerned and not in the public interest to pursue;**
- 26.21 **the complaint is such that it is unlikely that an investigation is likely to come to a firm conclusion on the matter and where independent evidence is likely to be difficult or impossible to obtain;**
- 26.22 **whether the subject Member has already provided a satisfactory remedy (e.g. apologising);**
- 26.23 **whether the matter is suitable for informal resolution and the Member complained of is amenable to such an approach.**

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What the Local Assessment Sub-Committee can do

- 27. When the Local Assessment Sub-Committee has considered your complaint it can:
 - 27.1 decide to take no further action on your complaint, with reasons;
 - 27.2 ask you for additional information, with reasons;
 - 27.3 refer your complaint to the Monitoring Officer for investigation;
 - 27.4 refer your complaint to the Monitoring Officer for other steps (**i.e. to resolve the complaint informally without the need for a formal investigation**); or
 - 27.5 refer your complaint to **the Police or other regulatory agency if the complaint identifies criminal conduct or breach of other regulation by any person.**

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A decision to take no further action

28. Reasons for taking no further action include:
- 28.1 that the subject matter of the allegation is outside the jurisdiction of the Standards Committee;
 - 28.2 that the allegation does not appear to disclose a failure **by the Member** to comply with the Code of Members' Conduct **when acting in that capacity**;
 - 28.3 the information submitted by you is insufficient to enable the Local Assessment Sub-Committee to reach a decision;
 - 28.4 the matter of complaint has already been the subject of a previous investigation or of an investigation by another regulator or the subject of proceedings in court;
 - 28.5 that the complaint is about something that happened so long ago that there would be little public benefit in taking action now;
 - 28.6 that the complaint is too trivial to warrant further action;
 - 28.7 that the complaint appears to be simply malicious, vexatious, politically motivated or tit-for-tat.

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The right to a review

29. If the Local Assessment Sub-Committee decides that no further action should be taken, you have the right within **20 working** days of its decision to request in writing a review of the decision. You have no right to a review in any other circumstances. A valid request for a review will be referred to the Local Review Sub-Committee, which comprises members different from those involved in the assessment decision. **A different Independent Person will be consulted and their comments made available to the Review Sub-Committee. If the matter concerns a parish Member a different Parish Representative will be consulted.** The Local Review Sub-Committee has all the powers of the Local Assessment Sub-Committee. There is no right to a further review after a review by the Local Review Sub-Committee⁴.

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Local investigations and local determinations

30. If the Monitoring Officer is directed to undertake an investigation, there is a separate procedure governing this process. Investigations are conducted in private and the outcome is reported to the Local Determinations Sub-Committee and may result in a public disciplinary hearing (local determination) before that Sub-Committee. Separate guidance on local determinations is available⁵.

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Other steps (i.e. informal resolution)

31. If the Monitoring Officer is directed to take other steps (i.e. **informal resolution**), e.g. training or conciliation, a report will be made to the

Standards Committee or relevant sub-committee on the outcome of that action. A direction to take other steps precludes an investigation or other disciplinary action.

32. If the Member makes a reasonable offer of resolution but the complainant is not willing to accept the offer the Local Assessment Sub-Committee will take account of this in deciding whether the complaint merits formal investigation.

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<#>In deciding whether to refer the case to Standards for England the Local Assessment Sub-Committee will consider:¶ <#>whether the status of Member(s) about whom the complaint is made makes it difficult for the Local Assessment Sub-Committee to deal with the matter;¶ <#>whether your status makes it difficult for the Local Assessment Sub-Committee to deal with the matter;¶ <#>too many members of the Standards Committee would have conflicts of interests;¶ <#>the Monitoring Officer or his staff have conflicts of interest and other arrangements cannot be put in place;¶ <#>whether the case is so serious or complex or involves so many Members that it cannot be handled locally;¶ <#>whether the handling of the complaint requires resources beyond that of the Monit... [2]

Withdrawing your complaint

33. Once you have submitted a valid complaint it can only be withdrawn before assessment by the Local Assessment Sub-Committee. Withdrawal requires the consent of the Local Assessment Sub-Committee in consultation with the Independent Person and Parish Representative, as appropriate. Consent will normally be given. However, in considering your request the Local Assessment Sub-Committee will consider:

- 33.1** the reasons for your request;
- 33.2** whether the public interest in pursuing action outweighs your request;
- 33.3** if the public interest suggests that the matter should proceed, the extent to which it can proceed without your involvement;
- 33.4** whether there is an identifiable reason for your request, e.g. improper pressure has been brought to bear.

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34. After assessment by the Local Assessment Sub-Committee a complaint cannot formally be withdrawn although the Local Assessment Sub-Committee, the Monitoring Officer or the Local Determinations Sub-Committee will, in consultation with the Independent Person and Parish Representative, as appropriate, depending upon the stage to which action has reached, take into account your request for the matter not to proceed further.

Variation

35. The Monitoring Officer may vary this procedure in any particular instance where he or she is of the opinion that such variation is desirable and does not conflict with statutory requirements.

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Using the complaint form

36. We ask you use the complaint form because it covers all the relevant headings. It is this document and any supporting information which are placed before the Local Assessment Sub-Committee to enable it to make a decision on your complaint, so it is important that the information is full, complete and readily accessible. Incomplete or unclear information may lead to the rejection of or delays in progressing your complaint.

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37. You can fill in the form then attach it to an e-mail or you can complete it in paper form. Please use black ink as it copies better.

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Guidance on individual provisions of the complaint form

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A. Your details

Paragraph 1.

38. We encourage you to use electronic means of communication because this makes it easier to send the information to the Local Assessment Sub-Committee. However, paper copies are equally as acceptable.

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39. Please be aware that your name and the details of your complaint may be made public.

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40. Personal information will be held in accordance with the Data Protection Act 1998 and processed for the purposes of handling your complaint (which includes supplying information to statutory regulators).

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Paragraphs 2-3

41. For statistical and reporting purposes and to enable us to comply with our statutory duties regarding diversity we should welcome the information about status and background.

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B. The details of your complaint

Paragraph 4

42. The Standards Committee has an overview of elected and co-opted Members of Horsham District Council and the 32 parish councillors in the Horsham District, of which there are over 400. Each of the 33 councils is governed by a separate Code of Members' Conduct. Some Members are members of both district and parish councils. It is important that your complaint identifies the individual Member(s) and the Council upon which he, she or they serve and were serving in relation to the conduct in question.

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Paragraph 5

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43. The information about your complaint is at the heart of the complaints process. Be clear **about whom** you are complaining, **what** it is alleged he or she has done, **how** this breaches the relevant Code of Members' Conduct and **when** the alleged incident(s) occurred.

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44. You should provide background material such as extracts of the relevant Code, minutes of meetings, or details of witnesses who can provide a statement of what was said or done.

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45. Your complaint should be made promptly so that the events are fresh in your mind and justice for all concerned is neither delayed nor denied. This is why we ask you to make your complaint within 28 days of the incident or to tell us why it has taken longer. However, some complaints, for example those involving bullying, may be based on a series of incidents taken together.

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46. Work through the incidents comprising your complaint in date order. Relate each incident to the background or supporting information and explain the impact upon you. For example:

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"On **1 November 2012** I attended a meeting of Horsham District Council. Councillor A accused me of dishonesty. He said "...". I found this hurtful and damaging to my professional reputation. His words are recorded in the minutes of the meeting. This document is marked "2". I believe that Councillor A is in breach of paragraph 3 of Horsham District Council's Code of Members' Conduct (failure to treat me with respect)".

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47. Do not just refer to a document or a series of documents; the Local Assessment Sub-Committee will expect to be told what your complaint is and is not charged with working this out for itself.

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C. Openness

Paragraphs 6-9

48. In the interests of fairness and in compliance with the rules of natural justice, we believe Members who are subject to a complaint have a right to know who has made the complaint and the substance of the allegation(s) made against him or her. However, this right is subject to what is said below about the timing of the release of information and exceptions.

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49. Your name and **a summary** of your complaint **may be sent to the Member and the parish council where the Member is a parish councillor. Your name may be withheld if you can demonstrate very exceptional circumstances.** Those very exceptional circumstances are where to disclose would be contrary to the public interest or would prejudice a person's ability to investigate the allegation and may include where you believe:

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Deleted: are confidential to the Local Assessment Sub-Committee and the Monitoring Officer until your complaint has been assessed by the Local Assessment Sub-Committee. However, they will be made public afterwards unless the Local Assessment Sub-Committee considers that there are very exceptional circumstances and a summary of your complaint will be sent to the Member(s) and the clerk to the parish council (where the Member is a parish councillor).

49.1 that you may be victimised or harassed by the Member(s) against whom you are submitting a written complaint (or by a person associated with him or her); or

49.2 that you may receive less favourable treatment from the Council because of the seniority of the Member against whom you are submitting a written complaint in terms of any existing Council service provision or any tender/contract that you may have or are about to submit to the Council; or

49.3 that you are an officer who works closely with the Member and have a reasonable belief that you may be adversely affected in your employment if your identity is disclosed.

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50. If you wish us to consider a request for withholding your name and/or the details of your complaint please complete the box but only do so if you feel that you have a very good case for seeking confidentiality. The Local Assessment Sub-Committee will need to **be** persuaded by you that the normal rules on openness should not apply.

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D. Remedy sought

Paragraph 10

51. **Section 28(1) of the Localism Act 2011 provides that "if a relevant authority finds that a member or co-opted member of the authority has failed to comply with its code of conduct (whether or not the finding is made following an investigation under arrangements in place under sub-section (6) it may have regard to the failure in deciding (a) whether to take action in relation to the member or co-opted member and (b) what action to take."**

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52. The remedies available to the Standards Committee in the event of an allegation being proven include:

- the issuing of a formal letter;
- a formal reprimand;

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- a recommendation that the Member be removed from any or all committees or sub-committees, Cabinet or sub-committees of Cabinet;
- restriction of the Member’s access to the premises of the relevant authority and the Member’s use of the resources provided that any such restrictions imposed upon the Member (a) are reasonable and proportionate to the nature of the breach, and (b) do not unduly restrict the Member’s ability to perform his or her functions as a member;
- the publication of its findings or other relevant publicity.

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53. In addition, with the agreement of the Member concerned the Standards Committee may also:

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- require the Member to undertake training ;
- require the Member to participate in such conciliation as specified by the Standards Committee; or
- require the member to submit an apology in a form specified by the Standards committee.

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54. The Standards Committee cannot suspend a Member, withdraw a Member’s allowance, impose financial penalties, award compensation or make awards of costs.

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55. Please indicate the remedy or remedies you are looking for or hoping to achieve by submitting this complaint. In particular, state what you think the Member should do or the Standards Committee could do in response to your complaint. The Standards Committee is not bound to agree to your request.

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E. What to do next

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Paragraphs 11-12

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56. Read through your complaint form and make sure that all the parts are completed and you have the supporting documents and then

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send it to the Monitoring Officer (see contacts below). Keep a copy of your complaint form for future reference.

F. What happens next

Paragraphs 13-16

57. We will acknowledge receipt of your complaint and give you a reference number which you should quote on all correspondence.
58. Once a valid complaint relating to an alleged breach of the relevant Code of Members' Conduct has been received by the Monitoring Officer, it will be presented to a meeting of the Local Assessment Sub-Committee for consideration.
59. You and the Member against whom the complaint has been made will not **usually** be allowed to attend the meeting of the Local Assessment Sub-Committee as **such meetings are likely to include confidential personal information. In such cases meetings will not be open to the press or public.**
60. The Local Assessment Sub-Committee may resolve to:
- 60.1 decide to take no further action on your complaint, with reasons;
 - 60.2 ask you for additional information, with reasons;
 - 60.3 refer your complaint to the Monitoring Officer for investigation;
 - 60.4 refer your complaint to the Monitoring Officer for other action (**i.e. to resolve the complaint informally without the need for an investigation**); or
 - 60.5 refer your complaint to **the Police or other regulatory body if your complaint identifies criminal conduct or breach of other regulation.**
61. You will be notified after the meeting and given information on any further stage(s) in the process at that time.
62. We normally expect to assess complaints within six weeks of receipt. This allows for the preparation for and consideration by the Local Assessment Sub-Committee which meets every four weeks.

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Deleted: Unless and until the Local Assessment Sub-Committee has considered your complaint, the nature of your complaint remains confidential to the Local Assessment Sub-Committee and the Monitoring Officer.

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G. Help

63. The procedures for assessing complaints by way of allegations against Members and for subsequently handling such allegations are regulated by the **Localism Act 2011 and any regulations made by the Secretary of State thereunder.**

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64. In line with the requirements of the **Equality Act 2010**, we can make reasonable adjustments to assist you if you have a disability that prevents you from making your complaint in writing. We can also help if English is not your first language.

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65. If you need any help before or in completing this form or want information on the progress of your complaint, please contact the Monitoring Officer.

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66. This document is available in alternative formats. Please call 01403 215549.

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67. The Monitoring Officer can be contacted at:

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Mrs S A Herbert
Monitoring Officer
Horsham District Council
Park North,
North Street,
Horsham RH12 1RL

☎ 01403 215478
☏ 01403 215487
✉ standards@horsham.gov.uk

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¹ Every relevant authority other than a parish council is required to put in place 'arrangements' under which written allegations that a member or co-opted member has failed to comply with the authority's code of conduct can be investigated and decisions on allegations made:

See Localism Act 2011 ss 28(6) and 28(9).

For 'relevant authority' see Localism Act 2011 s 27(6).

The 'arrangements' must include provision for the principal authority to investigate and make decisions in relation to members and co-opted members of parish councils Localism Act 2011 s 28(9).

For 'principal authority' in relation to a parish council see Localism Act 2011 s 29(9). The 'arrangements' which a relevant authority must put in place for dealing with code of conduct complaints must include provision for the appointment by the authority of at least one independent person whose views (a) must be sought and taken into account, by the authority before it takes a decision on an allegation which it has decided shall be investigated (b) may be sought by the authority at any stage, and (c) may be sought by a member or co-opted member of the authority or of a parish council if that person's behaviour is the subject of an allegation See Localism Act 2011 s 28(7).

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² It is open to the authority to reserve decisions on allegations unto itself, to delegate responsibility to an ordinary committee of the council or to an officer such as the Monitoring Officer: See Local Government Act 1972 s 101.

³ For a form of complaint form, see Appendix D(A).

⁴ There is no statutory right to a review of the decision for the complainant, although this may be considered good practice where the sub-committee or Monitoring Officer decide to take 'no further action' on the complaint. Irrespective of whether the "arrangements" provide for a right of review a right of complaint to the LGO if the complaint has not been handled properly or the High court alleging judicial review could be made.

⁵ For a form of guidance on local determinations, see Appendix G

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References to Standards for England

In deciding whether to refer the case to Standards for England the Local Assessment Sub-Committee will consider:

- whether the status of Member(s) about whom the complaint is made makes it difficult for the Local Assessment Sub-Committee to deal with the matter;
- whether your status makes it difficult for the Local Assessment Sub-Committee to deal with the matter;
- too many members of the Standards Committee would have conflicts of interests;
- the Monitoring Officer or his staff have conflicts of interest and other arrangements cannot be put in place;
- whether the case is so serious or complex or involves so many Members that it cannot be handled locally;
- whether the handling of the complaint requires resources beyond that of the Monitoring Officer or of the Standards Committee;
- whether there is substantial governance dysfunction in the Council;
- whether the complaint relates to long-term or systematic member/officer bullying that the case should be handled outside the District Council;
- whether the case involves matters of national interest or importance or of particular legal difficulty;
- whether the public might perceive that the Council has an interest in the outcome of the case.

If the Local Assessment Sub-Committee refers the complaint to Standards for England, Standards for England may investigate the case itself or refer the case back to the Local Assessment Sub-Committee for further consideration.

Our ref: CES/



**Horsham
District
Council**

serving our towns and villages

COMPLAINT FORM:

CODE OF MEMBERS' CONDUCT¹

(Please read the 'GUIDANCE FOR POTENTIAL COMPLAINANTS'² before completing this Form).

You can fill in the form on-line and then attach it to an e-mail or you can download it and complete it in paper form or fill in a paper copy. Please use black ink as it copies better.

A. Your details

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

Title:	
First name:	
Last name:	
Address:	
Contact telephone:	
Email address:	
Signature:	
Date of complaint:	

Please be aware that your name and the details of your complaint may be made public in accordance with the **provisions of the Localism Act 2011 and any regulations made there under**.

Personal information will be held in accordance with the Data Protection Act 1998 and processed for the purposes of handling your complaint (which includes supplying information to statutory regulators).

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

- A member of the public
- An elected or co-opted Member of a Council (specify _____)
- An independent member of a Standards Committee
- A Member of Parliament
- A Monitoring Officer
- Other council employee, contractor or agent of the Council
- Other (_____)

3. Equalities Monitoring Form - please fill in the attached form.

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B. The details of your complaint

4. Please provide us with the name of the Member(s) you believe have breached the relevant council's Code of Members' Conduct:

Title	First name	Last name	Specify Council

5. Please explain in this section (or on separate sheet(s)) what the Member is alleged to have done that you believe breaches the Code of Conduct. If you are complaining about more than one Member you should clearly explain what each individual person has done, with dates and witnesses to substantiate the alleged breach.

It is also important that you provide all the evidence you wish to have taken into account by the Local Assessment Sub-Committee of the Council's Standards Committee when it decides whether or not to take any action on your complaint.

- You should be specific, wherever possible, about exactly what you are alleging the Member said or did. For instance, instead of writing that the Member insulted you, you should state what it was he or she said or did to insult you.

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- You should provide the dates of the alleged incidents wherever possible. If you cannot provide exact dates it is important to give a general timeframe.
- You should confirm whether there are any witnesses to the alleged conduct and provide their names and contact details if possible.
- You should provide any relevant background information or other relevant documentary evidence to support your allegation(s).
- You should specify which paragraphs of the relevant Code of Members' Conduct which you think the Member has breached.
- If the incident(s) about which the allegation(s) are being made occurred over 28 days ago, clearly explain why the complaint was not made during that period of time.

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

(Continue on separate sheet(s), as necessary)

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C. Openness

6. In the interests of fairness and in compliance with the rules of natural justice, we believe Members who are complained about have a right to know who has made the complaint and the substance of the allegation(s) made against him/her.

7. **Your name and a summary of your complaint may be sent to the Member and the clerk of the parish council (where the Member is a parish councillor). Your name and the details of your complaint may be withheld if you can demonstrate very exceptional circumstances.**

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Deleted: are confidential to the Local Assessment Sub-Committee and the Monitoring Officer until your complaint has been assessed by the Local Assessment Sub-Committee, they will be made public afterwards unless the Local Assessment Sub-Committee considers that there are very

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8. Very exceptional circumstances are where to disclose would be contrary to the public interest or would prejudice a person's ability to investigate the allegation and may include, for example:-

- **where you** believe you may be victimised or harassed by the Member(s) against whom you are submitting a written complaint (or by a person associated with the same); or
- **where you believe you** may receive less favourable treatment from the Council because of the seniority of the Member against whom you are submitting a written complaint in terms of any existing Council service provision or any tender/contract that you may have or are about to submit to the Council; **or**
- **you are an officer who works closely with the Member against whom the allegation is made and have a reasonable belief that you may be adversely affected in your employment if your identity is disclosed.**

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9. If you wish us to consider a request for withholding your name and/or the details of your complaint please complete information below.

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D. Remedy sought

10. The remedies available to the Standards Committee in the event of an allegation being proven include **the issuing of a formal letter, a formal reprimand, a recommendation that the Member be removed from any or all committees or sub-committees or Cabinet or sub-committee of Cabinet, restriction of the Member's access to the premises of the relevant authority and the Member's use of the resources provided that any such restrictions imposed upon the Member (a) are reasonable and proportionate to the nature of the breach, and (b) do not unduly restrict the Member's ability to perform his or her functions as a member, the issue of a press release or other relevant publicity. In addition the Monitoring Officer may seek to secure a local resolution of the matter during which he or she may seek to arrange training for the Member, conciliation or an apology by the Member. There is no power to suspend a Member, impose a financial penalty, award compensation or make an award of costs. Remedies in relation to a parish councillor complaint will be by way of recommendation to the relevant Parish Council.** Please indicate the remedy or remedies you are looking for or hoping to achieve by submitting this complaint.

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(Continue on separate sheet(s), as necessary)

E. What to do next

11. Have you:

- Completed all the sections on this form?
- Signed the form?
- Enclosed all the relevant documents?

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12. When you have completed this form send it together with all your supporting documents either in paper form or electronically to

Monitoring Officer (Local Assessment)
 Horsham District Council
 Park North,
 North Street,
 Horsham RH12 1RL

e-mail: standards@horsham.gov.uk

F. What happens next

13. We will acknowledge receipt of your complaint and give you a reference number which you should quote on all correspondence.

14. Once a valid complaint relating to an alleged breach of the relevant Code of Members' Conduct has been received by the Monitoring Officer, **the views of the Independent Person and the Parish Representative, as appropriate will be sought.** It will then be presented to a meeting of the Local Assessment Sub-Committee for consideration. **The Member will be notified that a complaint has been made.** Unless and until the Local Assessment Sub-Committee has considered your complaint, the nature of your complaint remains confidential to the Local Assessment Sub-Committee, **those consulted** and the Monitoring Officer. You and the Member against whom the complaint has been made will not be allowed to attend the meeting of the Local Assessment Sub-Committee. **The matter will be considered in private as the meeting is likely to consider confidential personal information and will not be open to the press and public.**

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15. The Local Assessment Sub-Committee may resolve to:

- (a) **take no further action on** your complaint, with reasons;
- (b) ask you for additional information, with reasons;
- (c) refer your complaint to the Monitoring Officer for investigation;
- (d) refer your complaint to the Monitoring Officer for other action **(i.e. informal resolution)**; or
- (e) refer your complaint to the **Police or other regulatory agencies if the complaint identifies criminal conduct or breach of other regulation by any person.**

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16. You will be notified after the meeting and given information on any further stage(s) in the process at that time.

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G. Help

17. The procedures for assessing complaints by way of allegations against Members and for subsequently handling such allegations are regulated by the **Localism Act 2011 and any regulations made there under by the Secretary of State**.

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18. Complaints must be submitted in writing. This includes fax and electronic submissions.

19. Complaints are assessed on the basis of the information supplied by you, it is, therefore, important that the information is full and complete.

20. In line with the requirements of the **Equality Act 2010**, we can make reasonable adjustments to assist you if you have a disability that prevents you from making your complaint in writing. We can also help if English is not your first language.

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21. If you need any help in completing this form or want information on the progress of your complaint, please contact the Monitoring Officer.

22. This document is available in alternative formats. Please call 01403 **215478**.

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23. The Monitoring Officer can be contacted at:

Mrs S A Herbert
Monitoring Officer
Horsham District Council
Park North,
North Street,
Horsham RH12 1RL

 01403 215478
Fax 01403 215487
 standards@horsham.gov.uk

¹ As to local assessment of complaints about local authority members generally see **Localism Act 2011 Chapter 7**.

² For a form of guidance for potential complainants see **Appendix D**.

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CODE OF MEMBERS' CONDUCT ARRANGEMENTS FOR DEALING WITH STANDARDS ALLEGATIONS UNDER THE LOCALISM ACT 2011 - GUIDANCE FOR MEMBERS¹

Introduction

- 1 It is expected that elected and co-opted members of the Council and the 32 parish councils within the district uphold the highest standards of public office. However, in the event that there is a complaint it is important that this is handled effectively to ensure public confidence is maintained.
- 2 Section 28(6) and (7) of the Localism Act 2011 requires the Council to put in place "arrangements" under which allegations that a member or co-opted member of the district council or of a parish council within the district has failed to comply with the relevant authority's code of conduct when they are acting in that capacity (a) can be investigated and (b) decisions made on such allegations.
- 3 These "arrangements" must provide for the authority to appoint at least one Independent Person whose views (a) must be sought, and taken into account by the authority before it takes a decision on an allegation which it has decided shall be investigated (b) may be sought by the authority at any other stage and (c) may be sought by a member or co-opted member of the authority or of a parish council if that person's behaviour is the subject of an allegation
- 4 The purpose of this Guidance is to comply with the requirements of the Localism Act 2011 and to explain the 'arrangements' which are in place to make a complaint about an elected or co-opted Member of Horsham District Council or an elected or co-opted Member of the 32 parish councils in Horsham District². A complaint must comprise a breach by a Member of the relevant council's Code of Members' Conduct when acting in that capacity. Complaints which are trivial, simply malicious,

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vexatious, politically-motivated or tit-for-tat are likely to be rejected. Complainants are encouraged to resolve complaints through informal means rather than following through this complaints procedure.

- 5 Overall responsibility for overseeing compliance with the Codes of Members' Conduct is that of Horsham District Council's Standards Committee. The Standards Committee comprises ~~seven~~ District Councillors. **In addition, the Council has co-opted two** parish council representatives and ~~two~~ persons independent of any council **to advise the committee but who are not entitled to vote**. The Committee has three sub-committees: the Local Assessment Sub-Committee, the Local Review Sub-Committee and the Local Determinations Sub-Committee. The Standards Committee and its sub-committees are advised and supported by Horsham District Council's Monitoring Officer.

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Deleted: each of which is chaired by an independent person, and includes a parish representative when parish matters are concerned

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Interpretation

- 6 **'Member' means the member of the authority who is the subject of the allegation made by the complainant, unless otherwise stated.**
- 7 **'Investigating Officer' means the person appointed by the Monitoring Officer to undertake an investigation and may include the Monitoring Officer and his or her representative.**
- 8 **'the Matter' is the subject matter of the allegation.**
- 9 **'the Standards Committee' refers to the Standards Committee or to any sub-committee to which it has delegated assessment of complaints, review of decisions or the conduct of the hearing unless the context indicates that it refers only to the standards committee itself.**
- 10 **'Independent Person' means a person appointed by the Council under the Localism Act 2011 s 28(7) to advise the standards committee and its sub-committees and who has the functions set out in the Localism Act 2011 s 28(7).**
- 11 **'Parish Representative' means a parish councillor appointed by the Council to advise the standards committee and its sub-committees in relation to cases involving parish councillors.**

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- 12 **'Monitoring Officer' means a statutory officer appointed by the Council under the Local Government and Housing Act 1989 ss 5**

5A who has a role in the promotion and maintenance of high standards of conduct within local authorities and his or her deputy or representative.

The assessment of complaints

13 The Local Assessment Sub-Committee has initial responsibility for considering written complaints by way of allegations against Members for breach of the relevant Code of Members' Conduct. This is known as assessment. The purpose of assessment is to determine whether or not, based on the information supplied by the complainant, **if the matter were proven it would amount to a breach** of the Code of Members' Conduct. No investigation or hearings are undertaken at this stage.

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14 **The Independent Person will be consulted on the allegation and whether in their view it could amount to a breach of the code of conduct. The Parish Representative will also be consulted in relation to complaints concerning parish councillors. Their views will be included in the Monitoring Officer's report to the Local Assessment Sub-Committee.**

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15 The Monitoring Officer will notify the Member subject to the complaint that a complaint has been made. You may seek views from the Independent Person appointed by the Council³.

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16 Following consultation with the Independent Person (and the Parish Representative as appropriate) the Local Assessment Sub-Committee will make a decision as to whether the complaint merits formal investigation. This decision will normally be made within 6 weeks of receipt of your complaint. You will be advised of the decision and the reasons for that decision.

17 If the Local Assessment Sub-Committee requires further information in order to reach a decision they may come back to you for such information and may request information from the Member against whom the complaint is directed. The Local Assessment Sub-Committee may also inform the parish council of your complaint and seek views of the parish council before deciding whether the complaint merits formal investigation if the complaint involves a parish councillor.

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18 In appropriate cases the Local Assessment Sub-Committee may direct the Monitoring Officer to seek to resolve the complaint informally without the need for a formal investigation. Such informal resolution may involve the member accepting that his or her conduct was unacceptable and offering an apology or other remedial action. Where the Member makes a reasonable offer of local resolution but you are not willing to accept that offer, the Local Assessment Sub-Committee will take account of this in deciding whether the complaint merits formal investigation.

19 If the complaint identifies criminal conduct or breach of other regulation by any person the Local Assessment Sub-Committee has power to call in the police and other regulatory agencies.

20 If the Local Assessment Sub-Committee decides that there is no **potential breach of the Code** it will decide to take no further action. If it decides that there is **a potential breach of the Code** then it can decide to take no further action or to refer the complaint to the Monitoring Officer for an investigation or other action or to **the Police or other regulatory body if the complaint identifies criminal conduct or breach of other regulation**. It can ask for further information to enable it to reach a decision. A decision to refer a case to the Monitoring Officer does not mean that the Local Assessment Sub-Committee has made its mind up about the complaint. Each of these steps is described in this **guidance note**.

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The Codes of Members' Conduct

21 Copies of the relevant council's Code of Members' Conduct are available, in the case of Horsham District Council, at the Council's offices, from the Council's Monitoring Officer or at its website http://www.horsham.gov.uk/files/Part_5A_Code_of_Conduct_Issue_24.pdf Parish council Codes of Members' Conduct are available from the relevant parish clerk or (where available) the parish council's website.

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Making complaints

22 Complaints by way of allegations must be made in writing and should be on the official complaint form⁴ which sets out all the necessary information. There is separate guidance for complainants available on Horsham District Council's website at <http://www.horsham.gov.uk/council/12363.aspx> or from the Monitoring Officer. This complaints procedure is separate from Horsham District Council's and the parish councils' complaints procedures which are directed at corporate and service failings. More

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information about Horsham District Council's complaints procedure can be accessed at <http://www.horsham.gov.uk/council/3144.aspx> or by contacting:

Sarah Gill
Complaints & Information Officer
Horsham District Council
Park North
North Street
Horsham RH12 1RL

☎ 01403 215470
✉ yoursay@horsham.gov.uk

23 A valid complaint must relate to the conduct of a named individual Member while in office since **1 July 2012**. The Local Assessment Sub-Committee cannot deal with complaints about the District Council or parish councils, their staff or services or about an individual's conduct before he or she was elected, co-opted or appointed or after he or she ceased to be a Member or to a period before the adoption of the statutory Codes of Members' Conduct in **2012**.

The handling of complaints

24 After making sure that the complaint is valid, i.e. it satisfies the requirements of paragraphs **25-26**, the Monitoring Officer will submit the complaint to the Local Assessment Sub-Committee. The Local Assessment Sub-Committee **may come to you for further information but is entitled to** rely on the information the complainant has provided. Complaints are normally assessed within six weeks of receipt. This allows for the preparation for and consideration by the Local Assessment Sub-Committee which is scheduled to meet every four weeks.

Openness

25 The complainant's **name and a summary of the complaint will usually be sent to you and the clerk to the parish council (if you are a parish councillor). The complainant is entitled to ask the Local Assessment Sub-Committee to keep their name and the details of the complaint confidential. They will need to demonstrate exceptional circumstances where to disclose** would be contrary to the public interest or would prejudice a person's ability to investigate the allegation and may include where **they** believe:

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Deleted: and the Monitoring Officer until after the complaint has been assessed by the Local Assessment Sub-Committee. After that time the complainant's name and the details of the complaint will become public, unless there are very exceptional circumstances, and a summary of the complaint will be sent to the Member(s) and the clerk to the parish council (where the Member is a parish councillor). The complaint form itself will not be released. Those very exceptional circumstances are where to disclose

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25.1 that they may be victimised or harassed by the Member(s) against whom the complainant is submitting a written complaint (or by a person associated with the Member); or

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25.2 that they may receive less favourable treatment from the Council because of the seniority of the Member against whom the complainant is submitting a written complaint in terms of any existing Council service provision or any tender/contract that you may have or are about to submit to the Council; or

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25.3 that they are an officer who works closely with the Member and has a reasonable belief that they may be adversely affected in their employment if their identity is disclosed.

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How the Local Assessment Sub-Committee assesses the complaint

26 In reaching its decisions on the complaint the Local Assessment Sub-Committee will consider the following depending on the nature of the complaint and the need to adopt a proportionate response:

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26.1 the extent to which the Member is alleged to have failed to treat others with respect;

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26.2 the extent to which the Member is alleged to have acted in a way that may cause the authority to breach an equality enactment;

26.3 whether the allegation relates to bullying, intimidating, or attempting to intimidate a person involved in an allegation against the Member;

26.4 whether in disclosing confidential information the Member failed to take or to heed advice;

26.5 the implications for public perception or the reputation of the Council;

26.6 the implications for staff relations;

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26.7 the seniority or position of influence of the Member and public trust and confidence;

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26.8 the consequences or the likely consequences of the Member's alleged actions;

26.9 the extent to which the Member is alleged to have used his or her position as a member *improperly* to confer or secure an advantage or disadvantage;

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26.10 the extent to which the Member is alleged to have misused or abused the resources of the Council;

26.11 the detriment caused by acting against advice when reaching decisions;

26.12 the extent to which a failure to register or to declare interests resulted from a failure or refusal to seek or to follow advice;

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- 26.13 the matter of complaint has already been the subject of a previous investigation or of an investigation by another regulator, e.g. the Local Government Ombudsman or the District Auditor, or the subject of proceedings in court;
- 26.14 that the complaint is about something that happened so long ago that there would be little public benefit in taking action now;
- 26.15 that the complaint is too trivial to warrant further action;
- 26.16 that the complaint appears to be simply malicious, vexatious, politically motivated or tit-for-tat;
- 26.17 the public benefit in directing an investigation or other steps;
- 26.18 the costs and officer and Member time which could incurred on an investigation or other steps;
- 26.19 **whether there is enough information currently available to justify a decision to refer the matter for investigation or to seek an informal resolution;**
- 26.20 **whether the complaint is about someone who has died, resigned, is seriously ill or is no longer a member of the Council concerned and not in the public interest to pursue;**
- 26.21 **the complaint is such that it is unlikely that an investigation is likely to come to a firm conclusion on the matter and where independent evidence is likely to be difficult or impossible to obtain;**
- 26.22 **whether the subject Member has already provided a satisfactory remedy (e.g. apologising);**
- 26.23 **whether the matter is suitable for informal resolution and the Member complained of is amenable to such an approach.**

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What the Local Assessment Sub-Committee can do

- 27 When the Local Assessment Sub-Committee has considered the complaint it can:
 - 27.1 decide to take no further action on the complaint, with reasons;
 - 27.2 ask the complainant for additional information, with reasons;
 - 27.3 refer the complaint to the Monitoring Officer for investigation;
 - 27.4 refer the complaint to the Monitoring Officer for other steps (i.e. to resolve the complaint informally without the need for an investigation); or

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27.5 refer the complaint to **the Police or other regulatory agency if the complaint identifies criminal conduct or breach of other regulation,**

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A decision to take no further action

28 Reasons for taking no further action include:

- 28.1 that the subject matter of the allegation is outside the jurisdiction of the Standards Committee;
- 28.2 that the allegation does not appear to disclose a failure **by the Member** to comply with the Code of Members' Conduct **when acting in that capacity**;
- 28.3 the information submitted by the complainant is insufficient to enable the Local Assessment Sub-Committee to reach a decision;
- 28.4 the matter of complaint has already been the subject of a previous investigation or of an investigation by another regulator or the subject of proceedings in court;
- 28.5 that the complaint is about something that happened so long ago that there would be little public benefit in taking action now;
- 28.6 that the complaint is too trivial to warrant further action;
- 28.7 that the complaint appears to be simply malicious, vexatious, politically motivated or tit-for-tat.

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The complainant's right to a review

29 If the Local Assessment Sub-Committee decides that no further action should be taken, the complainant has the right within **20 working** days of its decision to request in writing a review of the decision. The complainant has no right to a review in any other circumstances. A valid request for a review will be referred to the Local Review Sub-Committee, which comprises members different from those involved in the assessment decision. **A different Independent Person will be consulted and their comments made available to the Review Sub-Committee. If the matters concerns a parish Member a different Parish Representative will be consulted.** The Local Review Sub-Committee has all the powers of the Local Assessment Sub-Committee. There is no right to a further review after a review by the Local Review Sub-Committee⁵.

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Local investigations and local determinations

30 If the Monitoring Officer is directed to undertake an investigation, there is a separate procedure governing this process. Investigations are conducted in private and the outcome is reported to the Local Determinations Sub-Committee and may result in a disciplinary hearing (local determination)

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before that Sub-Committee. Separate guidance on local determinations is available⁶.

Other steps (i.e. local resolution)

31 If the Monitoring Officer is directed to take other steps (i.e. informal resolution), e.g. training or conciliation, a report will be made to the Standards Committee or relevant sub-committee on the outcome of that action. A direction to take other steps precludes an investigation or other disciplinary action and may include the Member accepting that his or her conduct is unacceptable and offering eg an apology.

32 If you make a reasonable offer of resolution but the complainant is not willing to accept the offer the Local Assessment Sub-Committee will take account of this in deciding whether the complaint merits formal investigation.

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Withdrawing a complaint

33 Once the complainant has submitted a valid complaint it can only be withdrawn before assessment by the Local Assessment Sub-Committee. Withdrawal requires the consent of the Local Assessment Sub-Committee (in consultation with the Independent Person and Parish Representative, as appropriate). Consent will normally be given. However, in considering the complainant's request the Local Assessment Sub-Committee will consider:

- 33.1** the reasons for the request;
- 33.2** whether the public interest in pursuing action outweighs the request;
- 33.3** if the public interest suggests that the matter should proceed, the extent to which it can proceed without the complainant's involvement;
- 33.4** whether there is an identifiable reason for the request, e.g. improper pressure has been brought to bear.

34 After assessment by the Local Assessment Sub-Committee a complaint cannot formally be withdrawn although the Local Assessment Sub-Committee, the Monitoring Officer or the Local Determinations Sub-Committee will (in consultation with the Independent Person and Parish Representative, as appropriate), depending upon the stage to which action has reached, take into account the complainant's request for the matter not to proceed further.

Appeals

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<#>In deciding whether to refer the case to Standards for England the Local Assessment Sub-Committee will consider:¶

<#>whether the status of Member(s) about whom the complaint is made makes it difficult for the Local Assessment Sub-Committee to deal with the matter;¶

<#>whether the complainant's status makes it difficult for the Local Assessment Sub-Committee to deal with the matter;¶

<#>too many members of the Standards Committee would have conflicts of interests;¶

<#>the Monitoring Officer or his staff have conflicts of interest and other arrangements cannot be put in place;¶

<#>whether the case is so serious or complex or involves so many Members that it cannot be handled locally;¶

<#>whether the handling of the complaint requires resources beyond that of the Monitoring Officer or of the Standards Committee;¶

<#>whether there is substantial governance dysfunction in the Council;¶

<#>whether the complaint relates to long-term or systematic member/officer bullying that the case sh[... [1]

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35 No right of appeal for a Member lies against a local assessment decision. A Member does have the right to appeal to the **Standards Committee** against a finding by the Local Determinations Sub-Committee of a breach of the Code of Members' Conduct following a local determination hearing. Further details of the right of appeal are given in any local determination decision notice.

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Supply of information

36 Decisions of the Local Assessment Sub-Committee are **usually made in private. Neither the complainant nor the Member will usually be permitted to attend where such meetings contain confidential personal information. In such cases meetings will not be open to the press or public.**

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Deleted: public documents and are kept on a publicly accessible database. Information about complaints and decisions is supplied by the Monitoring Officer to Standards for England in accordance with the Council's statutory reporting obligations. Such information may also be supplied to other statutory regulators.

Variation

37 **The Monitoring Officer may vary this procedure in any particular instance where he or she is of the opinion that such a variation is desirable and does not conflict with statutory requirements.**

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Help

38 The procedures for assessing complaints by way of allegations against Members and for subsequently handling such allegations are regulated by the **Localism Act 2011 and any regulations made by the Secretary of State there under.**

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39 If you need any help or information on the progress of a complaint, please contact the Monitoring Officer. However, the Monitoring Officer will not enter into correspondence about a decision of the Local Assessment Sub-Committee.

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40 This document is available in alternative formats. Please call 01403 215478.

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41 The Monitoring Officer can be contacted at:

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Mrs S A Herbert
Monitoring Officer
Horsham District Council
Park North,
North Street,

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Horsham RH12 1RL

☎ 01403 215482
Fax 01403 215487
✉ standards@horsham.gov.uk

42 Further information about Code of Conduct and the ethical framework can be obtained from **the Council's website:**
<http://www.horsham.gov.uk/council/members/1113.aspx>

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Eleventh Floor
Portland Tower
53 Portland Street
Manchester
M1 3LF

¹ As to arrangements for dealing with complaints about local authority members see Localism Act 2011 Chapter 7

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✉: enquiries@standardsforengland.gov.uk
and accessed on-line at its website
<http://www.standardsforengland.gov.uk/>

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² Every relevant authority other than a parish council is required to put in place

'arrangements' under which written allegations that a member or co-opted member has failed to comply with the authority's code of conduct can be investigated and decisions on allegations made: See Localism Act 2011 ss 28(6) and 28(9).

For 'relevant authority' see Localism Act 2011 s 27(6).

The 'arrangements' must include provision for the principal authority to investigate and make decisions in relation to members and co-opted members of parish councils Localism Act 2011 s 28(9).

For 'principal authority' in relation to a parish council see Localism Act 2011 s 29(9).

The 'arrangements' which a relevant authority must put in place for dealing with code of conduct complaints must include provision for the appointment by the authority of at least one independent person whose views (a) must be sought and taken into account, by the authority before it takes a decision on an allegation which it has decided shall be investigated (b) may be sought by the authority at any stage, and (c) may be sought by a member or co-opted member of the authority or of a parish council if that person's behaviour is the subject of an allegation See Localism Act 2011 s 28(7).

³ An Independent Person has the stated functions in the Localism Act 2011 s 28(7). They may also be co-opted onto any ordinary committee established to promote and maintain high standards of conduct but only in an advisory capacity.

⁴ For a form of complaint form, see Appendix D(A).

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⁵ There is no statutory right to a review of the decision for the complainant , although this may be considered good practice where the sub-committee or Monitoring Officer decide to take 'no further action' on the complaint. Irrespective of whether the "arrangements" provide for a right of review a right of complaint to the LGO if the complaint has not been handled properly or the High court alleging judicial review could be made.

⁶ For a form of guidance on local determinations, see Appendix G.

References to Standards for England

In deciding whether to refer the case to Standards for England the Local Assessment Sub-Committee will consider:

- whether the status of Member(s) about whom the complaint is made makes it difficult for the Local Assessment Sub-Committee to deal with the matter;
- whether the complainant's status makes it difficult for the Local Assessment Sub-Committee to deal with the matter;
- too many members of the Standards Committee would have conflicts of interests;
- the Monitoring Officer or his staff have conflicts of interest and other arrangements cannot be put in place;
- whether the case is so serious or complex or involves so many Members that it cannot be handled locally;
- whether the handling of the complaint requires resources beyond that of the Monitoring Officer or of the Standards Committee;
- whether there is substantial governance dysfunction in the Council;
- whether the complaint relates to long-term or systematic member/officer bullying that the case should be handled outside the District Council;
- whether the case involves matters of national interest or importance or of particular legal difficulty;
- whether the public might perceive that the Council has an interest in the outcome of the case.

If the Local Assessment Sub-Committee refers the complaint to Standards for England, Standards for England may investigate the case itself or refer the case back to the Local Assessment Sub-Committee for further consideration.

Local Government Act 2000 (as amended) and The Standards Committee (England) Regulations 2008/1085 and in accordance with Standards for England's statutory guidance.

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PROCEDURE FOR LOCAL INVESTIGATION OF ASSESSED COMPLAINTS ABOUT LOCAL AUTHORITY MEMBERS¹

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Introduction

1. The behaviour of Members is regulated by Horsham District Council's Code of Members' Conduct (in relation to Members of Horsham District Council) and each of the Parish Councils' Codes of Members' Conduct (in relation to Parish Councillors). The District Council's Standards Committee has overall responsibility for the handling of complaints against members of both District and Parish Councils in the District. **From 1 July 2012 allegations of breaches of the relevant Code of Members' Conduct are referable to the Local Assessment Sub-Committee of the Standards Committee.** This Guidance explains how the Standards Committee either itself or through its relevant sub-committees handles complaints and how it can ask the District Council's Monitoring Officer to investigate complaints against district and parish councillors. It also contains a summary of the procedure which will be followed by the Monitoring Officer and the Standards Committee in the handling of local investigations. The procedure is required to conform to the requirements of the **Localism Act 2011**. **Under the Localism Act 2011 s 28(6) the Council is required to have in place 'arrangements' for dealing with written allegations that a member or co-opted member has failed to comply with the relevant code of conduct. In particular the 'arrangements' must set out how such allegations (a) can be investigated and (b) decisions on allegations can be made.**
2. **Help can be obtained from the Monitoring Officer (see under Help and Contacts).**
3. **This note sets out the procedure which will be followed in the local investigation of allegations of misconduct by councillors. This procedure will apply to allegations of breach of the authority's Code of Members' Conduct by elected and co-opted members of the authority and parish council members. No departure will be made**

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Appendix F

from this procedure unless and until the Monitoring Officer has first notified the Member against whom the allegation has been made of the proposed variation to the procedure and the reasons for that variation.

Interpretation

4. 'Member' means the member of the authority who is the subject of the allegation made by the complainant, unless otherwise stated.
5. 'Investigating Officer' means the person appointed by the Monitoring Officer to undertake an investigation and may include the Monitoring Officer and his or her representative.
6. 'the Matter' is the subject matter of the allegation.
7. 'the Standards Committee' refers to the Standards Committee or to any sub-committee to which it has delegated assessment of complaints, review of decisions or the conduct of the hearing unless the context indicates that it refers only to the standards committee itself.
8. 'Independent Person' means a person appointed by the Council under the Localism Act 2011 s 28(7) to advise the standards committee and its sub-committees and who has the functions set out in the Localism Act 2011 s 28(7)².
9. 'Parish Representative' means a parish councillor appointed by the Council to advise the standards committee and its sub-committees in relation to cases involving parish councillors³.
10. 'Monitoring Officer' means a statutory officer appointed by the Council under the Local Government and Housing Act 1989 ss 5 5A who has a role in the promotion and maintenance of high standards of conduct within local authorities and his or her deputy or representative.

The assessment of complaints

11. The Local Assessment Sub-Committee has initial responsibility for considering written complaints by way of allegations against Members

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Appendix F

for breach of the relevant Code of Members' Conduct. This is known as assessment.

What the Local Assessment Sub-Committee can do

12. When the Local Assessment Sub-Committee considers a complaint it can:

12.1 decide to take no further action on the complaint, with reasons;

12.2 ask for additional information, with reasons;

12.3 refer the complaint to the Monitoring Officer for investigation;

12.4 refer the complaint to the Monitoring Officer for other steps (i.e. informal resolution); or

12.5 refer the complaint to the Police or other regulatory agency if the complaint identifies potential criminal conduct or breach of other regulation.

13. When the Local Assessment Sub-Committee refers a matter to the Monitoring Officer for a local investigation, the Monitoring Officer must carry out that investigation and report to the Standards Committee. He or she may undertake the investigation himself or herself or delegate the investigation to the Deputy Monitoring Officer or another investigator. The investigator is called the Investigating Officer. Where the Monitoring Officer concludes after an investigation that the Member has breached the Code of Members' Conduct, he or she must arrange for the Standards Committee to consider the report and determine the matter⁷. The local administration of the procedure is carried out by the Monitoring Officer and his or her monitoring and standards team. The person who undertakes a local investigation and/or presents the case to the Sub-Committee which makes any local determination will not be the person advising the Sub-Committee.

14. Where the Investigating Officer has found, after investigation, that the Member has not acted in breach of the authority's Code of Members' Conduct for Members or a local protocol, the Standards Committee will meet to decide whether to accept that finding, or to proceed to a formal hearing.

15. Where the Investigating Officer has found that there has been a failure to comply with the Code of Members' Conduct for Members or a local protocol or where the Standards Committee decides to hold a full hearing, there will then be a formal hearing to determine whether a

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breach has occurred and whether any action should be taken in consequence.

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16. In this process, the function of the Investigating Officer is to ensure, as far as possible, that all the information which is relevant to the allegation is identified and presented to the Standards Committee, to enable the Standards Committee to come to an informed decision as to whether the **Member** has failed to comply with the authority's Code of Members' Conduct for Members or a local protocol and upon any consequential action. The Standards Committee acts in an inquisitorial manner, rather than an adversarial manner, seeking the truth in relation to the conduct of the **Member** on the balance of the information available to it and may commission further investigation or information if it needs to do so in order to come to a decision.

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"Councillor" means the member of the District or Parish Council who is the subject of the allegation being considered by the Standards Committee, unless stated otherwise. It also includes the Councillor's representative. ¶
"Investigating Officer" means the person appointed by the Monitoring Officer to undertake that investigation (which may include the Monitoring Officer, and his or her representative)¹². ¶
"The Matter" is the subject matter of the Investigating Officer's report. ¶
"the Standards Committee" refers to the Standards Committee or to any of its sub-committee to which it has delegated the conduct of the assessment, review or hearing¹³, unless the context indicates that it refers only to the Standards Committee itself.

Notification of Referral for investigation to the Monitoring Officer

Appointment of Investigating Officer

17. Upon receipt of the referral from the Local Assessment Sub-Committee, the Monitoring Officer will appoint an Investigating Officer in respect of the allegation and instruct him or her to conduct an investigation of the allegation and to report thereon to the authority's Standards Committee. The Investigating Officer may be an officer of the authority, an officer of another local authority, or an external Investigating Officer.

18. The Investigating Officer may appoint persons to assist him/her in the conduct of his/her functions and may obtain such professional advice as may be necessary for the conduct of the investigation.

19. There are two distinct roles: that of the Investigating Officer and that of legal advisor. The Monitoring Officer may him or herself take on the role of Investigating Officer but where he or she does so the role of legal advisor will need to be re-allocated.

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Notification to the **Member**

20. The Monitoring Officer will then notify in writing the **Member** against whom the allegation is made:

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- 20.1 that the allegation has been referred to him for local investigation and determination;

- 20.2 the identity of the person making the allegation (unless identification of the complainant might prejudice the investigation or put the complainant at risk);

- 20.3 of the conduct which is the subject of the allegation;

Appendix F

- 20.4** of the paragraph(s) of the Code of Members' conduct or local protocol which appear to him to be relevant to the allegation;
- 20.5** of the procedure which will be followed in respect of the allegation;
- 20.6** of the identity of the Investigating Officer;
- 20.7** of the identity of the Independent Person whose views may be sought by the Member; and
- 20.8** of the identity of the Parish Representative whose views may be sought by the Member if the Member is a parish councillor.
- 21.** The Monitoring Officer shall provide the Member with a copy of the complaint.
- 22.** In very exceptional cases, where the Monitoring Officer has reason to believe that there is a serious risk of intimidation of witnesses or destruction of evidence, the Monitoring Officer may initiate an investigation before notifying the Member.
- Notification to the Person who made the Allegation**
- 23.** At the same time as notifying the Member, the Monitoring Officer will notify the person who made the allegation in writing of the matters set out above.
- Notification to the Standards Committee**
- 24.** At the same time as notifying the Member, the Monitoring Officer will notify each member of the Standards Committee in writing of the matters set out above.
- Notification to any other Standards Committee**
- 25** At the same time as notifying the Member, the Monitoring Officer will notify each member of the Standards Committee of any other authority concerned in writing of the matters set out above.
- Notification to the Parish Council Clerk**
- 26.** Where the allegation relates to the conduct of a member of a Parish Council in his or her capacity as such, at the same time as notifying the Member, the Monitoring Officer will notify the Clerk of the Parish Council concerned in writing of the matters set out above.
- Initial response of the Member**
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27. In notifying the **Member** of an investigation, the Monitoring Officer shall request the **Member** to respond to the Investigating Officer in writing within 14 days of notification as follows:

27.1 advising the Investigating Officer whether the **Member** admits or denies the breach of the Code of Members' Conduct or local protocol which is the subject of the allegation;

27.2 listing any documents which the **Member** would wish the Investigating Officer to take into account in any investigation of the allegation, where possible providing copies of these documents and informing the Investigating Officer of where the original documents may be inspected;

27.3 providing the Investigating Officer with the name, address and telephone number (or other appropriate contact details) of an person or organisation whom the **Member** would wish the Investigating Officer to interview in the course of any investigation of the allegation; and

27.4 providing the **Member** with any information which the **Member** would wish the Investigating Officer to seek from any person or organisation.

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Supporting information from the person who made the allegation

28. In notifying the person who made the allegation as above, the Monitoring Officer will request the person to respond to the Investigating Officer within 14 days:

28.1 listing any documents which the person would wish the Investigating Officer to take into account in any investigation of the allegation, where possible providing copies of these documents, and informing the Investigating Officer of where the original documents may be inspected;

28.2 providing the Investigating Officer with the name, address and telephone number (or other appropriate contact details) of an person or organisation whom the person would wish the Investigating Officer to interview in the course of any investigation of the allegation; and

28.3 providing the Investigating Officer with any information which the person would wish the Investigating Officer to seek from any person or organisation.

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Conduct of Investigation

Purpose of the Investigation

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29. The purpose of the Investigating Officer's investigation is to enable him/her to prepare and present to the Standards Committee a report which, would provide the Standards Committee with sufficient information to determine whether the **Member** has acted in breach of the Code of Members' Conduct or local protocol and, where there has been a breach of the Code of Members' Conduct, whether any action should be taken in respect of the **Member** or in consequence of the breach, and what any such action should be.

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Termination of or change of course in the Investigation

30. The Investigating Officer may terminate his or her investigation at any point, where he or she is satisfied that he or she has sufficient information to enable him or her to report to the Standards Committee and to enable the Standards Committee to come to a considered decision on the allegation.

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31. The information obtained during the course of an investigation is to be treated as confidential until the investigation is completed. However, the fact that an investigation is being conducted does not need to remain confidential.

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New evidence or information

32. Where, in the course of his or her investigation, the Investigating Officer becomes aware of any new evidence or information which appears to him or her to indicate a breach of the Code of Members' Conduct or local protocol by the **Member** other than the breach which he or she is currently investigating or the matter is materially more serious or materially less serious than when the Local Assessment Sub-Committee considered the matter at assessment and the Local Assessment Sub-Committee would have made a different decisions or the circumstances of the **Member** has changed, the Investigating Officer shall report the matter to the Monitoring Officer. The Monitoring Officer will then determine whether to report the additional matter to the Standards Committee.

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Evidence Gathering

33. Following notification to the **Member**, the Investigating Officer will identify an initial list of persons to be interviewed, organisations from whom information is to be sought and documents to be inspected as part of the investigation. Where the **Member** has provided the Investigating Officer with the information requested above, the Investigating Officer shall include in this list each document, person and organisation referred to in that response, unless he or she is of the opinion that the inclusion of that document, person or organisation would unreasonably delay the completion of the investigation rather than to contribute to the accuracy of the Investigating Officer's final report. The Investigating Officer may supplement or amend this list at any stage of the investigation.

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Production of documents, information and explanations

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34. In the course of the investigation, the Investigating Officer and any person authorised on his/her behalf may amongst other things make such enquiries of any person or organisation, and request any person or organisation to provide any document or information which is in his or its possession or control, or provide any explanation, as he or she thinks necessary for the purposes of carrying out the investigation.

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35. In the course of the investigation, the Investigating Officer and any person authorised on his or her behalf may require any authority of which the **Member** is a member to provide any document which is in his or its possession or control which he or she thinks necessary for the purposes of carrying out the investigation.

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Interviews

Requesting attendance

36. In the course of the investigation the Investigating Officer may request any person to attend and appear before him or otherwise provide any information, document or explanation as he or she thinks necessary for the purposes of carrying out the investigation.

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Representation

37. Any person who appears before the Investigating Officer may arrange to be accompanied at his or her own expense by a solicitor or friend.

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Notes of interviews

38. Where practicable, following the interview the Investigating Officer shall produce a written note of the material points of the interview, provide two copies of that note to the person interviewed and ask him or her to return one copy signed as a correct record of the interview, with such corrections or amendments as they may feel necessary for that purpose.

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Costs

39. The Investigating Officer may, where he or she considers that it is appropriate in order to facilitate the conduct of the investigation, pay to any person who provides any document, information, advice or explanation in response to his or her request, such fees or allowances as he or she considers to be appropriate subject to the maxima set by the authority.

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Confidentiality

40.1 All information gathered in the course of an investigation will be regarded as confidential.

40.2 All parties that are interviewed will be requested to maintain confidentiality regarding the Matter and members will be

reminded of their obligation under paragraph 4 of the Code of Members' Conduct⁴, not to disclose information that they have received in confidence.

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40.3 Any information obtained during the investigation will not be disclosed unless:

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40.3.1 the disclosure will assist the Investigating Officer to perform his or her statutory functions,

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40.3.2 the disclosure will assist the Monitoring Officer to perform his or her statutory functions,

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40.3.3 the Investigating Officer has permission from the person to whom the information relates to disclose it,

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40.3.4 the information has already lawfully been made public,

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40.3.5 the disclosure is made for the purposes of criminal proceedings in the United Kingdom.

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40.4 Any draft report issued by the Investigating Officer on the outcome of the investigation will be marked as 'confidential' to preserve the integrity of any further investigation that the Investigating Officer may need to carry out.

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40.5 Final reports will be made available for public inspection unless they contain confidential or exempt information as defined by the Local Government Act 1972 Part VA.

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Reference to Police or other regulatory agencies

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41. At any point in the course of the investigation, if the Investigating Officer is of the opinion the complaint identifies criminal conduct or breach of other regulation by any person he or she may, after consulting the Monitoring Officer, suspend his or her investigation, and the Monitoring Officer shall then request the Police or other regulatory agency to investigate the matter.

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42. Where the Police or other agency does investigate the matter, the Monitoring Officer shall ensure that the Member concerned, the person who made the complaint, the members of the Standards Committee and any parish or town council is informed. Where the Police or other regulatory agency declines to undertake the investigation, the Monitoring Officer shall

instruct the Investigating Officer to resume his or her investigation.

Reference back to the Monitoring Officer

43. At any point in the course of the investigation, if the Investigating Officer is of the opinion

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43.1 that the seriousness of the matters which he or she is investigating are more or less serious than may have seemed apparent and had the Standards Committee been aware it would have made a different decision on how the case would be dealt with;

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43.2 that the subject member has died, is seriously ill or has resigned;

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43.3 that during the course of the investigation new evidence has been uncovered of the conduct of the Member that breaches the Code of Members' Conduct, but that the new evidence extends the scope of the investigation beyond the allegation referred by the Local Assessment Sub-Committee; or

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43.4 that the Member is obstructing the investigation by refusing to co-operate,

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the Investigating Officer shall refer the matter to the Monitoring Officer for further instructions. It is open to the Monitoring Officer to refer the matter back to the Local Assessment Sub-Committee.

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Deferring an Investigation

44. In certain circumstances, for example ongoing criminal proceedings or the serious illness of key party, an investigation can be deferred. Advice should be taken from the Monitoring Officer.

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The Draft Report

45. When the Investigating Officer is satisfied that he or she has sufficient information or has obtained as much information as is likely to be reasonably capable of being obtained, he or she shall prepare a draft report setting out:

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45.1 the details of the allegation;

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45.2 the relevant provisions of statute, of the Code of Members' Conduct and any relevant local protocols;

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45.3 the Member's initial response to notification of the allegation (if any);

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Appendix F

- 45.4** the relevant information, advice and explanations which he or she has obtained in the course of the investigation;
- 45.5** a list of any documents relevant to the matter;
- 45.6** a list of those persons whom he or she has interviewed and those organisations from whom he or she has sought information;
- 45.7** a note of any person or organisation who has failed to co-operate with the investigation and the manner in which they have failed to co-operate;
- 45.8** a statement of his or her draft findings of fact;
- 45.9** his or her conclusion as to whether the **Member** has or has not failed to comply with the Code of Members' Conduct for Members of any authority or a local protocol, and
- 45.10** any recommendations which the Investigating Officer is minded to make to any authority concerned for reviewing or reconsidering any decision which was the subject of the breach of the Code of Members' Conduct or local protocol, for rectifying any deficiency in the authority's decision-making procedures or for preventing or deterring any breach of the Code of Members' Conduct or local protocol or to remedy the position of any person who may have suffered detriment or injustice as a result of the breach. Where the allegation relates to a Parish Councillor, such recommendations would be recommendations which the Investigating Officer would recommend that the Standards Committee make to the Parish Council.
- 46.** The draft reports should also state that the report does not necessarily represent the Investigating Officer's final finding and that the Investigating Officer will present a final report to the Standards Committee once he or she has considered any comments received on the draft report.
- 47.** The Investigating Officer shall then send a copy of his or her draft report in confidence to the **Member** and the person making the allegation and request that they send any comments thereon to him or her within 14 days.
- 48.** The Investigating Officer may send a copy of, or relevant extracts from his or her draft report in confidence to any person on whose evidence he or she has relied in compiling the draft report and request that they send any comments thereon to him or her within 14 days.
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Appendix F
The Final Report

49. After the expiry of that period (or such extended period as the Investigating Officer may allow), the Investigating Officer shall reconsider and amend his or her draft report in the light of any comments received, and produce and send to the Monitoring Officer his or her final report. The final report should state that the report represents the Investigating Officer's final findings and will be presented to the Standards Committee and should have appended to it copies of any documents which the Investigating Officer has relied on in reaching his or her conclusions, such as background documents of telephone conversations, letters and notes of interviews with witnesses;

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50. The Investigating Officer shall then send a copy of the final report to the **Member**, advising that:

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50.1 where the final report concludes that there has not been a failure to comply with the Code of Members' Conduct for Members or a local protocol, he **or** she will refer the report to the Standards Committee for its consideration; and

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50.2 where the final report concludes that there has been a failure by the **Member** to comply with the Code of Members' Conduct for Members or with a local protocol, he/she will refer the report to the Standards Committee for a formal hearing.

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51. The Monitoring Officer shall ensure that, when the agenda for the Standards Committee is sent out to members of the Standards Committee, including the final report, the agenda and the report are also sent to:

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50.1 The person who made the complaint; **and**

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50.2 The Clerk to the Parish Council (if any);

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together with a note explaining the circumstances under which the Standards Committee may conduct a hearing into the allegations and the procedure for these events.

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52. 52.1 Where the Standards Committee considers a report of no failure to comply, it shall make one of the following findings:

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52.1.1 **that** it accepts the Investigating Officer's finding that the Councillor has not failed to comply with the Code of Members' Conduct for Members as set out in the allegation;

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52.1.2 **that** it accepts the Investigating Officer's finding that, on the facts as set out in the report, the Councillor has not failed to comply with a local protocol; or

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Appendix F

52.1.3 that the matter should be considered at a hearing of the Standards Committee, conducted in accordance with the authority's adopted Procedure for Local Determination Hearings.

52.2 **Where the Standards Committee considers a report of no failure to comply, but it is minded to find that a hearing should nevertheless be conducted in accordance with the authority's adopted procedure for local determination hearings it shall first seek , and take into account, the views of the Independent Person⁵.**

52.3 **Where the matter concerns a parish councillor it shall also consider the views of the Parish Representative⁶.**

53. Where the Standards Committee finds no failure to comply with the Code of Members' Conduct or with a local protocol, the Monitoring Officer shall, as soon as practicable thereafter, send a written notice of that finding and the reasons on which it was based, together with a copy of the Investigating Officer's report to

53.1 **the Member;**

53.2 **the Standards Committee if the finding was made by a sub-committee of the Standards Committee;**

53.3 **the Standards Committee of any other local authority (other than a parish or town council) of which the Member is also a Member**

53.3 **the Parish Council, if the Member was a member of a Parish Council; and**

52.4 **the person who made the allegation**

and shall ask the **Member** whether he objects to the publication of a notice of the finding in at least one local newspaper and arrange for the publication of such a notice unless the **Member** so objects.

53. Where the Standards Committee finds that despite the Investigating Officer finding no breach, that the matter should be considered at a full hearing (Note -this is not a finding that there has been a failure to comply with the Code or local protocol but simply that the Committee is not at this stage prepared to come to a final conclusion) **or** the Investigating Officer's report contains a finding that the **Member** did fail to comply with the Code of Members' Conduct or a local protocol, the Monitoring Officer shall arrange for the matter to be considered at such a hearing in accordance with the authority's adopted Procedure for Local Determination Hearings.

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Appendix F

Variation

54. The Monitoring Officer may vary this procedure in any particular instance where he or she is of the opinion that such a variation is desirable and does not conflict with statutory requirements.

Help and Contacts

Monitoring Officer
Horsham District Council
Park North
North Street
Horsham
RH12 1RL

standards@horsham.gov.uk

Tel: 01403 215482
Fax: 01403 215487

¹ The Localism Act 2011 s 28 requires a relevant authority other than a parish council to have in place 'arrangements' under which allegations that a member or co-opted member have failed to comply with the authority's code of members' conduct (a) can be investigated and (b) decisions on allegations can be made. For 'relevant authority' see Localism Act 2011 s 26(6). This Form is for the guidance of monitoring officers and members when a local investigation is to be completed by the monitoring officer and would form part of the 'arrangements' adopted by the authority. This form assumes the decision to refer the allegation for investigation was made by the Local Assessment Sub-Committee of the Council's Standards Committee. The decision could equally have been made by full council or, subject to the necessary delegations being made, another ordinary committee or sub-committee of the council or an officer of the council such as the Monitoring Officer see Local Government Act 2972 s 101. Appendix F sets out the steps and procedure for the arranging and conducting of a local investigation.

² A relevant authority other than a parish council is required to appoint at least one Independent Person whose views are to be sought and taken into account by the authority before it makes a decision on an allegation that it has decided to investigate see Localism Act 2011 s 28(7)(a). Their views may also be sought by the authority in circumstances not within s 28(7)(a). As to 'relevant authority' see Localism Act 2011 s 27(6).

³ A committee can, but there is no requirement to do so, co-opt a parish representative to advise on parish matters but with no voting rights.

⁴ For a form of code of members' conduct see Appendix C.

⁵ A relevant authority other than a parish council is required to appoint at least one Independent Person whose views are to be sought and taken into account by the authority before it makes a decision on an allegation that it has decided to investigate see Localism Act 2011 s 28(7) (a). Their views may also be sought by the authority in circumstances not within s 28(7) (a). As to 'relevant authority' see Localism Act 2011 s 27(6).

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A committee can, but there is no requirement to do so, co-opt a parish representative to advise on parish matters but with no voting rights.

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LOCAL DETERMINATION OF COMPLAINTS ABOUT MEMBERS

Guidance for Members¹

Introduction

1. The behaviour of members is regulated by Horsham District Council's Code of Members' Conduct (in relation to Members of Horsham District Council) and each Parish Council's Code (for parish councillors). Allegations of breaches of the relevant Code are referable to the Local Assessment Sub-Committee of the Standards Committee. This Guidance explains how the Local Assessment Sub-Committee of the Standards Committee handles complaints and how it can ask the District Council's Monitoring Officer to investigate complaints against district and parish councillors. The Standards Committee will then determine the complaints. It also contains a summary of the procedure which will be followed by the Monitoring Officer and the Standards Committee. The procedure is required to conform to the **requirements of the Localism Act 2011². Under the Localism Act 2011 s 28(6) the Council is required to have in place 'arrangements' for dealing with written allegations that a member or co-opted member has failed to comply with the relevant code of conduct. In particular the 'arrangements' must set out how such allegations (a) can be investigated and (b) decisions on allegations can be made.**
2. **This note sets out the procedure which will be followed in the local determination of allegations of misconduct by members and co-opted members.**
3. **The local administration of complaints made to the Standards Committee is carried out by the Monitoring Officer and his or her monitoring and standards team. Help can be obtained from the Monitoring Officer (see under Help and Contacts).**

Interpretation

- 4 **'Member' means the member of the authority who is the subject of the allegation made by the complainant, unless otherwise stated.**

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Deleted: 2. The local administration of complaints made to the Standards Committee is carried out by the Monitoring Officer and his Corporate Services team. The person who undertakes a local investigation and/or presents the case to the sub-committee which makes any local determination will not be the person advising the sub-committee.

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- 5 'Investigating Officer' means the person appointed by the Monitoring Officer to undertake an investigation and may include the Monitoring Officer and his or her representative.
- 6 'the Matter' is the subject matter of the allegation.
- 7 'the Standards Committee' refers to the Standards Committee or to any sub-committee to which it has delegated assessment of complaints, review of decisions or the conduct of the hearing unless the context indicates that it refers only to the standards committee itself.
- 8 'Independent Person' means a person appointed by the Council under the Localism Act 2011 s 28(7) to advise the standards committee and its sub-committees and who has the functions set out in the Localism Act 2011 s 28(7)³.
- 9 'Parish Representative' means a parish councillor appointed by the Council to advise the standards committee and its sub-committees in relation to cases involving parish councillors⁴.
- 10 'Monitoring Officer' means a statutory officer appointed by the Council under the Local Government and Housing Act 1989 ss 5 5A who has a role in the promotion and maintenance of high standards of conduct within local authorities and his or her deputy or representative.

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Assessment and Investigations

The assessment of complaints¹¹. The Local Assessment Sub-Committee has initial responsibility for considering written complaints by way of allegations against Members for breach of the relevant Code of Members' Conduct. This is known as assessment.

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What the Local Assessment Sub-Committee can do

12. When the Local Assessment Sub-Committee considers a complaint it can:
- 12.1 decide to take no further action on the complaint, with reasons;
 - 12.2 ask for additional information, with reasons;
 - 12.3 refer the complaint to the Monitoring Officer for investigation;
 - 12.4 refer the complaint to the Monitoring Officer for other steps (i.e. informal resolution without the need for a formal investigation); or
 - 12.5 refer the complaint to the Police or other regulatory agency if the complaint identifies potential criminal conduct or breach of other regulation.

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What the Monitoring Officer must do in relation to a direction to carry out a local investigation

- 13. When the Standards Committee refers a matter to the Monitoring Officer for a local investigation, the Monitoring Officer must carry out that investigation and report to the Standards Committee. Where the Monitoring Officer concludes after an investigation that the member has breached the Code of Conduct, he or she must arrange for the Standards Committee to consider the report and determine the matter. The local administration of the procedure is carried out by the Monitoring Officer and her standards and monitoring team. The person who undertakes a local investigation and/or presents the case to the sub-committee which makes any local determination will not be the person advising the sub-committee.
- 14. On completion of an investigation the Monitoring Officer must make one of the following findings:
 - 14.1 there has been a failure to comply with the Code of Members' Conduct;
 - or,
 - 14.2 there has not been a failure to comply with the Code of Members' Conduct.
- 15. Investigations can, typically, take several months. Most investigations and report on the investigation are completed within six months of the original complaint being assessed by the Assessment Sub-Committee.

Reference to Police or other regulatory agencies

- 16. At any point in the course of the investigation, if the Investigating Officer is of the opinion the complaint identifies criminal conduct or breach of other regulation he or she shall refer the matter back to the Monitoring Officer to refer to Police or other regulatory agency.

Reference back to the Standards Committee

- 17. At any point in the course of the investigation, if the Investigating Officer is of the opinion:
 - 17.1 that during the course of the investigation new evidence has been uncovered of the conduct of the member that breaches the Code of Conduct but that the new evidence extends the scope of the investigation, revealing for instance a pattern of behaviour; or
 - 17.2 that the member is obstructing the investigation; or
 - 17.3 that the subject matter has died, is seriously ill or has resigned and he or she is of the opinion that it is no longer appropriate to continue with the investigation; or

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17.4 that during the course of the investigation new evidence has been uncovered of the conduct of the Member that breaches the Code of Members' Conduct, but that the new evidence extends the scope of the investigation beyond the allegation referred by the Local Assessment Sub-Committee

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the case can be referred back to the Standards Committee.

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The Standards Committee's responsibilities

The need for a hearing

18. The Standards Committee will seek to hold a hearing in relation to an allegation within three months of the Monitoring Officer receiving the investigation report or the completion of the Monitoring Officer's report where the Monitoring Officer has undertaken a local investigation. The hearing will be conducted by a sub-committee of the Standards Committee.

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What the Monitoring Officer must do in relation to Ethical Standards Officer's reports¶

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9. When an Ethical Standards Officer refers a matter to the Monitoring Officer, the Monitoring Officer must arrange for the Standards Committee to consider the Ethical Standards Officer's report and determine the matter.¶

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19. When the Monitoring Officer receives a report, he or she must give a copy of that report to the member about whom the allegation has been made.

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20. Normally, hearings should take place at least 14 days after the member who the allegation has been made about receives a copy of the investigation report. However, the hearing can be held less than 14 days after the member receives a copy of the investigation report if the member agrees.

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Before the hearing

The pre-hearing process

21. The Standards Committee will use a written pre-hearing process to:

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21.1 identify whether the member about whom the allegation has been made disagrees with any of the findings of fact in the Investigating Officer's report;

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21.2 decide whether or not those disagreements are significant to the hearing;

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21.3 decide whether or not to hear evidence about those disagreements during the hearing;

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21.4 decide whether or not there are any parts of the hearing that should be held in private; and

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21.5 decide whether or not any parts of the Investigating Officer's report or other documents should be withheld from the public.

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The Member's response

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22. The Monitoring Officer will write to the Member concerned to propose a date for the hearing, outline the hearing procedure and the member's rights. He or

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she will also ask for a written response from the member, within a set time, to find out whether or not he or she:

22.1 wants to be represented at the hearing by a solicitor, barrister or any other person;

22.2 disagrees with any of the findings of fact in the Investigating Officer's or the Monitoring Officer's report, including the reasons for any disagreements;

22.3 wants to give evidence to the sub-committee, either verbally or in writing;

22.4 wants to call relevant witnesses to give evidence to the sub-committee;

22.5 wants any part of the hearing to be held in private;

22.6 wants any part of the Investigating Officer's report or other relevant documents to be withheld from the public; and/or

22.7 can come to the hearing.

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The Investigating Officer's response

23. The Monitoring Officer will invite the relevant Investigating Officer to comment or will comment on the member's response within a set time, to say whether or not he or she:

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23.1 wants to be represented at the hearing;

23.2 wants to call relevant witnesses to give evidence to the sub-committee;

23.3 wants any part of the hearing to be held in private; and

23.4 wants any part of the Investigating Officer's report or other relevant documents to be withheld from the public.

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Other witnesses

24. The sub-committee may also arrange for any other witnesses to be present who it feels may help in determining the case, including the person who made the original allegation. However, the sub-committee cannot order witnesses to appear or give evidence.

The pre-hearing process summary

25. When the Monitoring Officer has received a response from the member concerned he will then write to everyone involved at least two weeks before the hearing to:

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25.1 set the date, time and place for the hearing;

25.2 summarise the allegation;

25.3 outline the main facts of the case that are agreed;

25.4 outline the main facts of the case which are not agreed;

25.5 note whether the member concerned or the Investigating Officer or the Monitoring Officer will go to or be represented at the hearing;

25.6 list those witnesses, if any, who will be asked to give evidence; and

25.7 outline the proposed procedure for the hearing.

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The Hearing

Preliminary

26. The members of the Sub-Committee will be selected by the Monitoring Officer after having consulted the Chairman of the Committee. **The Sub-Committee may co-opt an Independent Person and a Parish Representative (where the determination involves a parish councillor) to assist the Sub-Committee in an advisory capacity only.**
27. The Standards Committee and the Sub-Committee will work fairly and in a way that encourages the confidence of members and the public. In particular, the Sub-Committee will control the procedures and evidence presented at the hearing including the way in which witnesses are questioned.
28. A Standards Committee hearing is a formal meeting of the authority and is not a court of law. It does not hear evidence under oath, but it does decide factual evidence on the balance of probabilities.
29. **Meetings of the sub-committee will usually include confidential personal information. If this is the case the meeting may not be open to the press or the public.**
30. The member may be represented or accompanied during the hearing by a solicitor, counsel or, with the permission of the Sub-Committee, another person.
31. The Sub-Committee may take legal advice at any time during the hearing or when it is considering the outcome.
32. The Sub-Committee may adjourn the hearing at any time to take advice and to consider representations and evidence in private.

Setting the scene

33. The Chairman of the Sub-Committee will introduce those involved in the hearing and explain the procedure to be followed.

Preliminary procedural issues

34. The Sub-Committee will seek to resolve any issues or disagreements about how the hearing should continue which have not been resolved during the pre-hearing process.

Hearing the evidence

35. The Sub-Committee, after having dealt with any preliminary issues, will establish whether there is disagreement about the facts.

36. In the event of there being no disagreement about the facts the Sub-Committee will consider whether or not the member in question has failed to follow the code.

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37. If there is a disagreement, the Monitoring Officer or Investigating Officer, if present, will be invited to make any necessary representations to support the relevant findings of fact in the report. With the Sub-Committee's permission, the Monitoring Officer or Investigating Officer may call any necessary supporting witnesses to give evidence. The Sub-Committee will give the member an opportunity to challenge any evidence put forward by any witness called by the investigator.

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38. The member will then have the opportunity to make representations to support his or her version of the facts and, with the Sub-Committee's permission, to call any necessary witnesses to give evidence.

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39. At any time, the Sub-Committee may question any of the people involved or any of the witnesses, and may allow the Monitoring Officer or Investigating Officer to challenge any evidence put forward by witnesses called by the member. **It may also question the Independent Person and the Parish Representative, as appropriate.**

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40. If the member disagrees with any relevant fact in the Investigating Officer's report, without having given prior notice of the disagreement, he or she must give good reasons for not mentioning it before the hearing. If the investigator is not present, the Sub-Committee will consider whether or not it would be in the public interest to continue in his or her absence. After considering the member's explanation for not raising the issue at an earlier stage, the Sub-Committee may then:

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40.1 continue with the hearing, relying on the information in the Investigating Officer's report;

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40.2 allow the member to make representations about the issue, and invite the Investigating Officer to respond and call any witnesses, as necessary; or

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40.3 postpone the hearing to arrange for appropriate witnesses to be present, or for the Investigating officer or the Monitoring Officer to be present if he or she is not already.

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41. At any time before the conclusion of the hearing the Sub-Committee may adjourn the hearing to enable further investigations to be undertaken either by the Monitoring Officer or the Investigating Officer.

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42. The Sub-Committee will consider the representations and evidence.

43. **The Sub-Committee will consider and take into account the views of the Independent Person⁵.**

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Did the member fail to follow the Code?

44. The Sub-Committee will consider whether or not, based on the facts it has found, the member has failed to follow the Code of Conduct. Deleted: 35
45. The member will be invited to give relevant reasons why the Sub-Committee should not decide that he or she has failed to follow the Code. Deleted: 36
46. The Sub-Committee will then consider any verbal or written representations from the Investigating Officer or the Monitoring Officer. Deleted: 37
47. The Sub-Committee may, at any time, question anyone involved on any point they raise in their representations, **including the Independent Person and the Parish Representative, as appropriate.** Deleted: 38
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48. The member will be invited to make any final relevant points. Deleted: 39
49. The Sub-Committee will withdraw to consider the representations. Deleted: 0
50. The Chairman will announce the Sub-Committee's findings of fact and its decision as to whether or not the member has failed to follow the Code of Conduct. Deleted: 41

If the member has not failed to follow the Code of Conduct

51. If the Sub-Committee decides that the member has not failed to follow the Code of Conduct, the Sub-Committee can move on to consider whether or not it should make any recommendations to the relevant authority. Deleted: 42

If the member has failed to follow the Code of Conduct

52. If the Sub-Committee decides that the member has failed to follow the Code of Conduct, it will consider any verbal or written representations from the Investigating Officer or the Monitoring Officer and the member as to: Deleted: 43

- 52.1 whether or not the Sub-Committee should set a penalty; and
52.2 what form any penalty should take.

53. The Sub-Committee may question the Investigating Officer or the Monitoring Officer and the member and take legal advice to make sure it has the information it needs in order to make an informed decision. **It may also seek advice from the Independent Person and the Parish Representative, as appropriate.** Deleted: 44.
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54. The Sub-Committee can make one of the following decisions:
54.1 the member has failed to follow the relevant Code of Conduct, but no action needs to be taken; or Deleted: G:\Monitoring Officer and Standards Committee\Local Determinations\Local Determination Documents Templates\Local determination - Guidance(3) for Members 2010.doc
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54.2 the member has failed to follow the Code of Conduct and should be penalised.

55. Decisions in relation to a parish councillor will be by way of recommendation to the relevant authority.

Penalties/Sanctions

56. Section 28(11) of the Localism Act 2011 provides that if a relevant authority finds that a member or co-opted member of the authority has failed to comply with its code of conduct (whether or not the finding is made following an investigation under arrangements in place under subsection (6) it may have regard to the failure in deciding (a) whether to take action in relation to the member or co-opted member and (b) what actions to take⁶.

57. The remedies available to the Sub-Committee in the event of an allegation being proven include, amongst other things, any one or a combination of the following:

57.1 the issuing of a formal letter;

57.2 a formal reprimand of the member;

57.3 a recommendation that the member be removed from any or all committees, Cabinet and/or sub-committees of the Council;

57.4 restriction of the member's access to the premises of the relevant authority and/or the member's use of the resources of the relevant authority, provided that any such restrictions meet both the following requirements -

57.4.1 they are reasonable and proportionate to the nature of the breach; and

57.4.2 they do not unduly restrict the member's ability to perform his or her functions as a member;

57.5 the publication of its findings or other relevant publicity.

• With the agreement of the Member concerned the sub-committee may also:

57.6 require the member to submit a written apology in a form specified by the Standards Committee;

57.7 require the member to undertake training as specified by the Standards Committee;

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- Deleted: If the Sub-Committee finds that a member has failed to follow the Code of Conduct and that he or she should be penalised, it may do any one or a combination of the following:
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<p>57.8 require the member to participate in such conciliation as is specified by the Standards Committee.</p>	<p>Deleted: a</p> <p>Deleted: ment that</p> <p>Deleted: s</p> <p>Deleted: ;</p> <p>Deleted: <#>partial suspension of the mem... [10]</p> <p>Formatted ... [11]</p> <p>Deleted: 47. . Suspen... [12]</p> <p>Deleted: 48</p>
<p>58. The sub-committee cannot suspend a Member, withdraw a Member's allowance, impose financial penalties, award compensation or make an award of costs.</p>	<p>Formatted ... [13]</p> <p>Formatted: Bullets and Numbering ... [14]</p> <p>Formatted ... [15]</p> <p>Formatted: Bullets and Numbering ... [16]</p> <p>Formatted ... [17]</p> <p>Formatted: Bullets and Numbering ... [18]</p> <p>Formatted ... [19]</p> <p>Formatted: Bullets and Numbering ... [20]</p> <p>Formatted ... [21]</p> <p>Formatted: Bullets and Numbering ... [22]</p> <p>Formatted ... [23]</p> <p>Formatted: Bullets and Numbering ... [24]</p> <p>Formatted ... [25]</p> <p>Formatted: Bullets and Numbering ... [26]</p> <p>Formatted ... [27]</p> <p>Formatted: Bullets and Numbering ... [28]</p> <p>Formatted ... [29]</p> <p>Formatted: Bullets and Numbering ... [30]</p> <p>Formatted ... [31]</p> <p>Formatted: Bullets and Numbering ... [32]</p> <p>Formatted ... [33]</p>
<p>59. When deciding on a sanction, the Sub-Committee should make sure that it is reasonable and in proportion to the member's behaviour. Before deciding what penalty to set, the Sub-Committee should consider the following, along with any other relevant circumstances:</p> <p>59.1 What was the member's intention? Did the member know that he or she was failing to follow the Code of Conduct?</p> <p>59.2 Did the member get advice from officers before the incident? Was that advice acted on in good faith?</p> <p>59.3 Has there been a breach of trust?</p> <p>59.4 Has there been financial impropriety?</p> <p>59.5 What was the result of failing to follow the Code of Conduct?</p> <p>59.6 How serious was the incident?</p> <p>59.7 Does the member accept he or she was at fault?</p> <p>59.8 Did the member apologise to the relevant people?</p> <p>59.9 Has the member previously been warned or reprimanded for similar misconduct?</p> <p>59.10 Has the member failed to follow the Code of Conduct before?</p> <p>59.11 Is the member likely to do the same thing again?</p>	<p>Deleted: 49</p> <p>Deleted: 50</p> <p>Deleted: or</p> <p>Formatted ... [37]</p> <p>Deleted: G:Monitoring... [38]</p> <p>Formatted ... [39]</p>
<p>60. The Chairman will announce the Sub-Committee's decision.</p> <p>Recommendations to the relevant authority</p>	<p>Deleted: Suspension... [35]</p> <p>Deleted: <#>bullying... [36]</p>
<p>61. After considering any verbal or written representations from the Monitoring Officer, the Investigating Officer, or the Independent Person and Parish Representative, as appropriate, the Sub-Committee will consider whether or not it should make any recommendations to the relevant authority, with a view to promoting high standards of conduct among members.</p>	<p>Deleted: 49</p> <p>Deleted: 50</p> <p>Deleted: or</p> <p>Formatted ... [37]</p> <p>Deleted: G:Monitoring... [38]</p> <p>Formatted ... [39]</p>

The written decision

62. The Sub-Committee will announce its decision on the day and provide a short written decision on that day. It will also issue a full written decision written 14 days after the end of the hearing to:

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- 62.1 the member who is the subject of the finding;
- 62.2 the Standards Committees of any other authorities concerned;
- 62.3 any parish councils concerned;
- 62.4 any person who made the allegation.

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Making the findings public

63. The Standards Committee will also arrange for a summary of the decision and reasons for that decision to be published in one or more newspapers that are independent of the authorities concerned and circulating in the area of those authorities. A summary may also be published on the Council's website.

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64. If the Sub-Committee finds that a member did not fail to follow the relevant authority's Code of Conduct, the public summary must say this, and give reasons for this finding. In these cases, the member involved is also entitled to ask that no summary of the decision should be passed to local newspapers.

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65. If the Sub-Committee finds that a member failed to follow the Code of Conduct, but that no action is needed, the public summary must say that the member failed to follow the Code of Conduct, outline what happened and give reasons for the Sub-Committee's decision not to take any action, and that the member may appeal.

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66. If the Sub-Committee finds that a member failed to follow the Code of Conduct and it sets a sanction, the public summary must say that the member failed to follow the Code of Conduct, outline what happened, explain what sanction has been set and give reasons for the decision made by the Sub-Committee, and that the member may appeal.

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67. The Standards Committee's and the Sub-Committee's reports and minutes should be available for public inspection for six years after the hearing. Sections of documents relating to parts of the hearing that were held in private will not have to be made available for public inspection.

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Costs

68. Members are responsible for meeting the cost of any representation at a Standards Committee hearing or appeal tribunal. The Standards Committee cannot make orders as to costs. Neither the District Council nor the parish councils can contribute to a member's costs or indemnify a member against costs which he or she may incur.

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Appeals to the Standards Committee⁷

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The right of appeal

69. The member who is the subject of a Local Determination Sub-Committee finding may appeal in writing to the Standards Committee against that finding.

70. The Monitoring Officer must receive the member's written application within 28 days of the member receiving notice of the Sub-Committee's decision. In this application, the member must outline the reasons for the proposed appeal, whether any application for suspension of any sanction is made and whether or not he or she wants the appeal carried out in writing or in person.

Appeal Sub-Committee

71. The Standards Committee will arrange for an Appeal Sub-Committee to deal with the member's appeal. The Sub-Committee will be made up of at least three members appointed by the Standards Committee who did not sit on the original Local Determinations Sub-Committee and may include the Chairman of the Committee himself or herself.

Variation

72. The Monitoring Officer may vary this procedure in any particular instance where he or she is of the opinion that such a variation is desirable and does not conflict with statutory requirements.

Help and contacts

73. For help please contact:

The Monitoring Officer

Park North
North Street
Horsham
RH12 1RL

Telephone: 01403 215507
Fax: 01403 215487
e-mail: standards@horsham.gov.uk
www.horsham.gov.uk

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Deleted: 60. When deciding whether or not to grant permission to appeal, the First-tier Tribunal will consider whether or not there is a reasonable chance of the appeal being successful, either in whole or in part.

¶ 61. The First Tier-tribunal will give the member concerned their written decision within 21 days of receiving the application. The President will also give his or her written decision to:

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¹ As to local determination of complaints about local authority members or councillors generally see the Localism Act 2011 Chapter 7. This Form is for the guidance of members when a local determination or hearing is to be convened. Such a local determination usually follows the completion of an investigation by the local authority's monitoring officer at the behest of a reference by the local assessment sub-committee.

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² Localism Act 2011 s28(6). This guidance on how an authority will deal with local determination would form part of the 'arrangements' the relevant authority (other than a parish council) is required to provide under these provisions. A failure to comply with a relevant authority's code of conduct is not to be dealt with otherwise than in accordance with arrangements under sub-section (6) see Localism Act 2011 s 28(4).

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³ A relevant authority other than a parish council is required to appoint at least one Independent Person whose views are to be sought and taken into account by the authority before it makes a decision on an allegation that it has decided to investigate see Localism Act 2011 s 28(7) (a). As to 'relevant authority' see Localism Act 2011 s 27(6).

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⁴ A committee can, but there is no requirement to do so, co-opt a parish representative to advise on parish matters but with no voting rights.

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⁵ Localism Act 2011 s 28(7) the views of the Independent Person appointed under s 28(7) must be sought and taken into account before it makes its decision on an allegation it has decided to investigate.

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⁶ Localism Act 2011 s28(11).

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⁷ The right of appeal to First Tier Tribunal has been removed see Localism Act 2011 Schedule 4. A right of appeal to the Standards Committee has been included.

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partial suspension of the member for a period up to a maximum of six months;

suspension of the member for a period up to a maximum of six months;

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partial suspension of the member for a period up to a maximum of six months or until such time as he or she submits a written apology in a form specified by the Standards Committee;

partial suspension of the member for a period up to a maximum of six months or until such time as he or she undertakes such training or has participated in such conciliation as the Standards Committee may specify;

suspension of the member for a period up to a maximum of six months or until such time as he or she submits a written apology in a form specified by the Standards Committee;

suspension of the member for a period up to a maximum of six months or until such time as he or she undertakes such training or has participated in such conciliation as the Standards Committee may specify.

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47. Suspension or partial suspension will normally start immediately after the Standards Committee has made its decision. The Standards Committee can choose to start the sanction at any time up to six months following its decision.

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Page 98: [35] Deleted Suspension may be appropriate for more serious cases, such as those involving:	Christie Redley	11/04/2012 15:06:00
Page 98: [36] Deleted bullying officers; trying to gain an advantage or disadvantage for himself or herself or others; or	Christie Redley	11/04/2012 15:06:00

dishonesty or breaches of trust.

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Standards for England;
the Standards Committee that made the original finding;
the Standards Committees of any other authorities concerned;
any parish councils concerned; and
any person who made the allegation.

62. If the President refuses to give permission, he or she will explain the reasons for that decision.

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Where the First-tier Tribunal decides that a member has failed to comply with the Code, the member can appeal to the Upper Tribunal (Administrative Appeals Chamber). The member must first apply to the First-tier Tribunal for permission to appeal. This application must be made in writing within 28 days of the Tribunal notifying the member of its decision.

64. Either party can seek to appeal the decision of the First-tier Tribunal to the Upper Tribunal (Administrative Appeals Chamber) if they can show that there was an error of law made in that decision. The party wishing to appeal must first apply to the First-tier Tribunal for permission to appeal within 28 days of receiving notification of the First-tier Tribunal's decision.
65. On receiving an application for permission to appeal the First-tier Tribunal may decide to review its decision if it is satisfied that there was an error of law. If the First-tier Tribunal decides not to review its decision, it will then consider whether to give permission to appeal the decision to the Upper Tribunal.
66. If the First-tier Tribunal refuses permission to appeal to the Upper Tribunal the appealing party has a right to make an application directly

to the Upper Tribunal for permission to appeal no later than one month after receiving that refusal decision.

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Other contacts

Standards for England

4th Floor
Griffin House
40 Lever Street
Manchester
M1 1BB

Telephone: 0845 078 8181 Fax: 020 7378 5001
e-mail: enquiries@standardsforengland.gov.uk
<http://www.standardsforengland.gov.uk/>

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First-tier Tribunal (Local Government Standards in England)

York House
31 -36 York Place
Leeds
LS1 2ED

Telephone: 0113 389 6086
Fax: 0113 389 6002
e-mail ap-enquiries@tribunals.gsi.gov.uk
<http://www.adjudicationpanel.tribunals.gov.uk/>

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CODE OF MEMBERS' CONDUCT - DISPENSATIONS¹

1. Applicability

The following arrangements for seeking dispensations from prohibitions on participation apply from the **1 July 2012**². The statutory basis for the rules is to be found **in the Localism Act 2011 sections 33 and 31(1) and (4)**³.

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Deleted: The Standards Committee (Further Provisions) (England) Regulations 2009 Part 4

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The authority may on a written request made to the proper officer by a member or co-opted member of the authority grant a dispensation relieving the member or co-opted member from either or both of the restrictions in section 31(4) of the Localism Act in cases described in the dispensation.

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2. Existing dispensations

All dispensations granted before (insert the date on which the council adopted its code of members' conduct) have ceased to apply³.

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3. New rules

The old rules for seeking dispensation under the Local Government Act 2000 are now replaced⁴. In future, dispensations may only be granted by the Council's Monitoring Officer or Standards Committee acting on a written request from a member⁵.

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4. Legal criteria

4.1 If a member or co-opted member of the authority (a) is present at a meeting of the authority, or of any committee, sub-committee, joint committee of the authority (b) has a disclosable pecuniary interest in any matter to be considered, or being considered at the meeting, and (c) is aware that the condition in paragraph (b) is met the member or co-opted member may not participate in the matter⁶.

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4.2 These rules apply only to either or both of the prohibitions from participation set out in the Localism Act 2011 section 31(4) concerning the matter in which a member or co-opted member has a disclosable pecuniary interest.

Section 31(4) provides:

"(4) The member or co-opted member may not -

- (a) participate, or participate further, in any discussion of the matter at the meeting, or
- (b) participate in any vote, or further vote, taken on the matter at the meeting

but this is subject to section 33"

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- 4.3 A dispensation can only be granted if after having had regard to all relevant circumstances the authority:
- 4.3.1 considers that without the dispensation the number of persons prohibited by section 31(4) from participation in any particular business would be so great a proportion of the body transacting the business as to impede the transaction of the business⁷, or
 - 4.3.2 considers that without the representation of different political groups on the body transacting any particular business would be so upset as to alter the likely outcome of any vote relating to the business⁸, or
 - 4.3.3 considers that granting the dispensation is in the interests of persons living in the authority's area⁹, or
 - 4.3.4 if it is an authority to which Part IA of the Local Government Act 2000 applies and is operating executive arrangements considers that without the dispensation each member the authority's executive would be prohibited by section 31(4) from participating in any particular business to be transacted by the authority's executive¹⁰, or
 - 4.3.5 considers that it is otherwise appropriate to grant a dispensation¹¹.

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Deleted: where the transaction of business of the authority would, but for the grant of any other dispensation in relation to that business on each occasion on which the dispensation would apply otherwise be impeded by or as a result of the mandatory provisions of the Code because:

Deleted: 2.1 the number of members of the authority prohibited from voting on the business of the authority at a meeting exceeds 50% of those members that, but for the granting of any dispensations relating to that business, would otherwise be entitled to vote on that business, OR¶

¶ 2.2 the number of members prohibited from voting on the business of the authority at a meeting would, but for the granting of any dispensations relating to that business, upset the political balance of that meeting (as defined within the Local Government and Housing Act 1989 and it's Regulations) to such an extent as to be prejudice the outcome of voting in that meeting.

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5. Development control

The political balance requirements have been disapplied to Development Control Committees and accordingly the criterion in paragraph 4.3.2 for dispensation does not apply to the consideration of development control matters¹².

6. Maximum period

A dispensation will specify the period for which it has effect and the period specified may not last for more than four years from the date of the giving of the dispensation¹³.

7. When dispensation should never be given

A dispensation should never be given where:



7.1 A member is prohibited from voting on a matter at a meeting of an overview and scrutiny committee of the authority relating to a decision made by any body of which that person was a member at the time the decision was taken¹⁴; OR

7.2 A member of the authority's executive is prohibited from exercising functions which are the responsibility of the executive and which would otherwise be discharged solely by that member¹⁵.

8. How to apply for a dispensation

If a member wishes to seek dispensation to enable him or her to participate in the consideration of a matter from which he or she would be excluded by the **provisions of section 31(4) of the Localism Act 2011**, he or she should write to or e-mail the Monitoring Officer a request for a dispensation explaining why it is desirable for a dispensation to be granted. At least **fourteen working days' notice must be given before the dispensation is required to enable (a) consideration of the matter by the Monitoring Officer together with all necessary consultations to be undertaken or (b) at the absolute discretion of the Monitoring Officer** the convening of a meeting of the Standards Committee or sub-committee set up by the Standards Committee to consider the matter¹⁶.

9. Records

The Standards Committee **will** record the existence, duration and nature of any dispensation and the record is to be kept with the Register of Members' Interests¹⁷.

10. The Monitoring Officer's or the Standards Committee's consideration of an application for dispensation

The following is a summary of what might be regarded as good practice in considering an application for a dispensation.

10.1 Dispensations should be granted only in exceptional circumstances.

10.2 **Dispensations cannot be granted other than in the circumstances set out in the Localism Act 2011 Section 33(2) (a) – (e) set out in paragraphs 4.1 to 4.3 above.**

10.3 **A dispensation cannot authorise a Member to act unlawfully.**

10.4 Dispensations **should not** be granted in the two circumstances set out in paragraph **7** above.

10.5 Any dispensations that have already been granted **will be ignored** when applying the legal criteria in paragraph **4**.

10.6 The **interest of the member seeking the dispensation with be balanced against**

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the potential effect on the outcome of the vote if the member is unable to participate.

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10.7 A dispensation may be granted to enable a member to speak only or to speak and vote.

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10.8 A dispensation should not be granted where the dispensation would conflict with the general principles which underlie the Code of Members' Conduct¹⁸.

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10.8.1 Selflessness

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Members should serve only the public interest and should never improperly confer an advantage or disadvantage on any person.

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10.8.2 Integrity

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Members should not place themselves in situations where their integrity may be questioned, should not behave improperly and should on all occasions avoid the appearance of such behaviour.

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10.8.3 Objectivity

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Members should make decisions on merit, including when making appointments, awarding contracts, or recommending individuals for rewards or benefits.

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10.8.4 Accountability

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Members should be accountable to the public for their actions and the manner in which they carry out their responsibilities, and should co-operate fully and honestly with any scrutiny appropriate to their particular office.

¶ Members may take account of the views of others, including their political groups, but should reach their own conclusions on the issues before them and act in accordance with those conclusions.¶

10.8.5 Openness

8.10.7 Respect for Others¶

Members should be as open as possible about their actions and those of their authority, and should be prepared to give reasons for those actions.

¶ Members should promote equality by not discriminating unlawfully against any person, and by treating people with respect, regardless of their race, age, religion, gender, sexual orientation or disability. They should respect the impartiality and integrity of the authority's statutory officers, and its other employees.¶

10.8.6 Honesty

Members should not place themselves in situations where their honesty may be questioned, should not behave improperly and should on all occasions avoid the appearance of such behaviour.

8.10.8 Duty to Uphold the Law¶
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10.8.7 Leadership

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Members should promote and support these principles by leadership, and by example, and should act in a way that secures or preserves public confidence.

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10.9 A dispensation should not be granted where the nature of the member's interest would damage public confidence in the conduct of the authority's business were the dispensation to be granted.

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10.10 If a dispensation is granted it should usually be for one specific item of business at one meeting of the authority.

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10.11 Consideration must take account of any legal requirement or statutory guidance issued by the Department for Communities and Local Government.

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10.12 Section 31(4) of the Localism Act 2011 does not apply in relation to anything done for the purposes of deciding whether to grant a dispensation under this section¹⁹.

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Further assistance can be obtained from the Monitoring Officer. Or e-mail standards@horsham.gov.uk.

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¶
<#>"dispensation" means such a dispensation as is mentioned in section 81(4) of the Local Government Act 2000 (disclosure and registration of members interests etc);
<#>"mandatory provisions" means the mandatory provisions of a model code of conduct which for the time being applies to the authority;
<#>"meeting" includes any meeting of the authority, of the executive of the authority, of any committee or sub-committee of the authority or its executive, of any joint committee or sub-committee of a joint committee, or of any area committee;
"member" means a member or co-opted member of an authority or a councillor appointed under section 16A of the Local Government Act 1972 (appointed councillors).

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1 A member or councillor with a disclosable pecuniary interest in a matter is precluded from participating or participating further in any discussion of the matter at a local authority meeting or participating in any vote, or further vote, taken on the matter at the meeting: see the Localism Act 2011 section 31(4). In certain circumstances, a member or councillor may apply to a relevant authority for a dispensation that enables him or her to participate in the matter: Localism Act 2011 s 33. The grant of a dispensation operates so as to prevent the member's participation from being a criminal offence or a breach of the code of conduct: Localism Act 2011 ss 34(1) 28(6). For 'relevant authority' see Localism Act 2011 s 27(6).

2 I.e. the date on which Chapter 7 of the Localism Act 2011 is scheduled to come into force and the date upon which any new code of conduct will be adopted.

3 The Localism Act 2011 Sch 4 amends the existing provisions in the Local Government Act 2000 relating to the conduct of local government members. For a member or co-opted member of a relevant authority the new standards provisions set out in the Localism Act 2011 Chapter 7 Sch 4 and Sch 25 Part 5 are likely to apply from 1 July 2012.

4 I.e. under the Local Government Act 2000 s81.

5 See Localism Act 2011 s 33.

6 See Localism Act 2011 ss 31(1) 31(4). Reference in para (a) to a committee of the authority includes a reference to the authority's executive and a reference to a committee of the executive. For these purposes a pecuniary interest is a 'disclosable pecuniary interest' if it is of a description specified in regulations Localism Act 2011 s 30(3).

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7 Localism Act 2011 s 33(2)(a)
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⁹ Localism Act 2011 s 33(2)(c).

¹⁰ Localism Act 2011 s 33(2)(d).

¹¹ Localism Act 2011 s 33(2)(e).

¹² The political balance requirements are specifically disapplied eg by the Local Government (Committees and Political Groups) Regulations 1990, SI 1990/1553 reg 16A(1) (as inserted by SI 1991/1398 and as amended by SI 1998/1918)(area committees) or when the council has so determined and no member has voted against that proposal: Local Government and Housing Act 1989 s 17(1).

¹³ A dispensation must specify the period for which it has effect and the period specified may not exceed 4 years Localism Act 2011 s 33(3).

¹⁴ The restrictions in SI 2009/1255 no longer apply.

¹⁵ The restrictions in SI 2009.1255 no longer apply. See now Localism Act 2011 s 31(8) concerning pecuniary interests in matters considered by a single member.

¹⁶ A relevant authority may on a written request made to the proper officer of the authority by a member or co-opted member of the authority grant a dispensation Localism Act 2011 s 33(1). This power can be delegated to a committee or officer of the Council: Local Government Act 1972 s 101.

¹⁷ Regulations made by the Secretary of State may provide for such records but it is good practice in any event.

¹⁸ The code of conduct in relation to members and co-opted members must when viewed as a whole be consistent with the seven Nolan Principles selflessness, integrity, objectivity, accountability, openness, honesty and leadership see Localism Act 2011 s 28(1) (a)-(g).

¹⁹ Localism Act 2011 s 33(4).



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Dispensations cannot be granted other than when the threshold requirements in paragraph 2 are met.		
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8.6 The Standards Committee will ignore		
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Standards Committee will balance the prejudicial interest of the member seeking the dispensation against		
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8.10.6 Personal Judgement

Members may take account of the views of others, including their political groups, but should reach their own conclusions on the issues before them and act in accordance with those conclusions.

8.10.7 Respect for Others

Members should promote equality by not discriminating unlawfully against any person, and by treating people with respect, regardless of their race, age, religion, gender, sexual orientation or disability. They should respect the impartiality and integrity of the authority's statutory officers, and its other employees.

8.10.8 Duty to Uphold the Law

Members should uphold the law and, on all occasions, act in accordance with the trust that the public is entitled to place in them.

8.10.9 Stewardship

Members should do whatever they are able to do to ensure that their authorities use their resources prudently and in accordance with the law.

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Part 5C

MONITORING OFFICER PROTOCOL

1. This protocol was adopted by Horsham District Council on 17th October 2001 and has been updated to take account of legislative changes. Fresh approval was given by the Council on ~~[]~~.

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2. **The role of the Monitoring Officer has evolved since the post was first created by the Local Government and Housing Act 1989. The role of ensuring legality and avoidance of maladministration provided for by the Local Government and Housing Act 1989 has been supplemented by additional roles in connection with governance and conduct, particularly with regard to the statutory process of adopting a local code of conduct for members of an authority, and the work of the authority in regulating and advising on the conduct of members.**

3. **The role of Monitoring Officer at Horsham District Council ('the Council') is undertaken by Sandra Herbert, the Council's Monitoring Officer and Principal Solicitor.**

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4. **It is acknowledged by the Council, the Executive and the Monitoring Officer that the proper exercise of the role of the Monitoring Officer could give rise to differences of opinion between the Monitoring Officer, members, and members of the Executive. The exercise by the Monitoring Officer of his or her functions and the co-operation by others in the performance of his or her role in accordance with this protocol will, however, assist the Council in ensuring that high standards are maintained.**

5. **The Monitoring Officer undertakes to discharge his or her responsibilities outlined in this protocol with determination and a manner which will enhance the reputation of the Council. In general terms his or her ability to discharge these duties depends on excellent working relations with colleagues and members but also the flow of information and access to debate particularly at early stages.**

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6. **It is recognised that the role of the Monitoring Officer can best be performed by someone:**

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- 6.1 **whose advice is respected and authoritative;**
- 6.2 **who recognises the importance of building relations with members and officers;**
- 6.3 **who can manage ambiguity and complexity;**



- 6.4 who can assist with creating conditions for successful innovation and change;
- 6.5 who demonstrates political insight and acumen and understanding of the Council's business plan and vision; and
- 6.6 who uses influencing and partnership skills and who works across boundaries and with multidisciplinary teams.

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7. The following arrangements and understandings between the Monitoring Officer and colleagues and members are designed to help ensure the effective discharge of the Monitoring Officer's functions:

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- (a) If not a member of the Chief Officers' Management Team the Monitoring Officer will have advance notice of those meetings and agenda and reports and the right to attend and speak.
- (b) Advance notice of meetings whether formal or informal between Chief Officers and members of the Executive or Committee Chairmen will be given to the Monitoring Officer where any procedural, vires or other constitutional issues are likely to arise.
- (c) Chief Officers will alert the Monitoring Officer to all emerging issues of concern including legality, probity, vires and constitutional issues.
- (d) The Monitoring Officer or his or her staff will have copies of all reports to members.
- (e) The Monitoring Officer is expected to develop good liaison and working relations with the Standards Board, the District Auditor and the Ombudsman including the giving and receiving of relevant information whether confidential or otherwise.
- (f) The Monitoring Officer will have a special relationship with the Chairman of the Council, Chairmen of the Standards and Scrutiny Committees and will ensure the Head of Paid Service and Chief Finance Officer have up-to-date information regarding emerging issues.
- (g) **The Monitoring Officer shall receive complaints against members and co-opted members of the Council and of all parish councils within the District on behalf of the Standards Committee and where complaints are referred to him or her by the Assessment Sub-Committee shall (a) investigate such complaints or (b) deal with any direction for steps other than an investigation (subject to prior consultation) and report back to the Standards Committee in accordance with such procedure**

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as is agreed by the Standards Committee from time to time.

(h) The Monitoring Officer shall establish and maintain a register of interests for members and co-opted members of the Council and all members and co-opted members of parish councils within the District.

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(i) The Head of Paid Service, Chief Finance Officer and Monitoring Officer will meet regularly to consider and recommend action in connection with current governance issues and other matters of concern regarding probity.

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(j) In carrying out any investigation (whether under Regulations or otherwise) the Monitoring Officer will have unqualified access to any information held by the Council and any employee who can assist in the discharge of his or her functions.

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(k) The Monitoring Officer will have control of a budget sufficient to enable him to seek Counsel's opinion on any matter concerning his or her functions.

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(l) The Monitoring Officer will be responsible for preparing a training programme for members on the ethical framework subject to the approval of the Standards Committee.

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(m) In consultation with the Chairman of the Council or the Leader the Monitoring Officer may defer the making of a formal report under Sections 5 or 5A (as the case may be) of the Local Government and Housing Act 1989 where another investigative body is involved.

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(n) The Monitoring Officer will make a report to the Council from time to time as necessary on the staff, accommodation and resources they require to discharge his or her functions.

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(o) The Monitoring Officer will appoint a deputy and keep him or her briefed on emerging issues.

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(p) The Monitoring Officer may delegate his or her functions in relation to matters referred to him or her under the Local Government Act 2000 Sections 57A, 60(2) or (3), 64(2) or (4).

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(q) The Monitoring Officer will make arrangements to ensure good communication between his or her office and Clerks to Parish Councils.

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(r) The Monitoring Officer will upon receiving a request to do so from an ethical standards officer undertake or arrange for the undertaking of a local investigation into an allegation of a breach of the Members' Code of Conduct and to report appropriately.

SUMMARY OF MONITORING OFFICER FUNCTIONS



Description	Source
1. Report on contraventions or likely contraventions of any enactment or rule of law.	Local Government and Housing Act 1989 Section 5, 5A
2. Report on any maladministration or injustice where Ombudsman has carried out an investigation	Local Government and Housing Act 1989 Section 5, 5A
3. Appointment of Deputy and power to delegate.	Local Government and Housing Act 1989 Section 5, Local Government Act 2000 Section 82A
4. Report on resources	Code of Members' Conduct Code of Employees' Conduct
5. Receive copies of whistleblowing allegations or misconduct	Code of Employees' Conduct
6. The local resolution of complaints alleging breach of the Code of Conduct for Members without formal investigation, wherever practicable.	'Arrangements' adopted by the authority under the Localism Act 2011 Section 28(6).
7. Receiving allegations alleging breach of the code of conduct for members and co-opted members and referring relevant matters to the Council's Standards Committee for assessment, review or hearing, as appropriate.	Localism Act 2011 Chapter 7 'Arrangements' adopted by the authority under the Localism Act 2011 Section 28(6).
8. Investigating and reporting on any complaints alleging breaches of the Code of Conduct for Members referred by the Council's Standards Committee.	Localism Act 2011 Chapter 7 'Arrangements' adopted for dealing with standards allegations Localism Act 2011 Section 28(6).
9. Dealing with a direction for 'steps other than an investigation' alleging breaches of the Code of Conduct for Members referred by the Council's Standards Committee (subject to prior consultation).	Localism Act 2011 Chapter 7 'Arrangements' adopted for dealing with standards allegations Localism Act 2011 Section 28(6).

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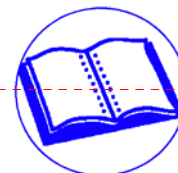
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<p>10. Act as Principal Authority in relation to parish councils. Carry out similar duties and powers in relation to allegations of breach of the code of conduct for all parish councils in the district as in paragraphs 6 to 9.</p>	<p>Localism Act 2011 29(9) Localism Act 2011 section 28 (6) (9).</p>	<p>Formatted: Font: 11 pt Formatted: Indent: Left: 0 pt, Tabs: 18 pt, Left Formatted: Font: 11 pt Formatted: Indent: Left: 0 pt Formatted: Font: 11 pt Formatted: Font: 11 pt Formatted: Font: 11 pt</p>
<p>11. Establish and maintain registers of members' interests and gifts and hospitality.</p>	<p>Localism Act 2011 Section 29(1) and Code of Members' Conduct.</p>	<p>Formatted Formatted Table Formatted: Font: 11 pt</p>
<p>12. Removing entries from the register of interests once the person no longer has the interest or is no longer a member or co-opted member.</p>	<p>Localism Act 2011 Section 29(3).</p>	<p>Deleted: Local Government Act 2000 Section 81 Formatted: Indent: Left: 0 pt, First line: 0 pt, Line spacing: single, Adjust space between Latin and Asian text, Adjust space between Asian text and numbers, Tabs: Not at 18 pt + 234 pt</p>
<p>13. Making the register of interests available for public inspection and publication on the council's website.</p>	<p>Localism Act 2011 Section 29(5).</p>	<p>Formatted: Font: 11 pt Formatted: Font: 11 pt</p>
<p>14. Exclude the details of sensitive interests from the register of interests.</p>	<p>Localism Act 2011 Section 32(1)</p>	<p>Formatted: Indent: Left: 0 pt Formatted: Font: 11 pt Formatted: Font: 11 pt Formatted: Font: 11 pt</p>
<p>15. Register pecuniary interests which are notified to them pursuant to section 31 of the Localism Act 2011 after arising and being declared at a meeting (if not on register or subject to pending notification).</p>	<p>Localism Act 2011 Section 31 (9).</p>	<p>Formatted: Font: 11 pt Formatted: Font: 11 pt</p>
<p>16. Carry out similar duties and powers in relation to register of interests for all parish councils within the district as in 10 to 15 including placing the parish register on the council's website.</p>	<p>Localism Act 2011 Section 29(4) (6).</p>	<p>Formatted: Font: 11 pt Formatted: Font: 11 pt</p>
<p>17. Advice to members on the interpretation of Code of Members' Conduct.</p>	<p>Code of Members' Conduct.</p>	<p>Formatted: Font: 11 pt</p>
<p>18. Key role in promoting and maintaining high standards of conduct through support to the Standards Committee.</p>	<p>Localism Act 2011 Section 27(1).</p>	<p>Deleted: Statutory Guidance paragraph 8.20. Deleted: 10. Liaison with Standards Board and Ethical Standards Officers ... [1]</p>
<p>19. Compensation for maladministration</p>	<p>Local Government Act 2000 Section 92</p>	<p>Formatted: Font: 11 pt Formatted: Font: 11 pt</p>
<p>20. Advising on any indemnities and</p>	<p>Local Government Act 2000.</p>	<p>Formatted: Font: 11 pt Formatted: Indent: Left: 0 pt</p>



<p>insurance issues for members or officers</p>	<p>Local Authorities (Indemnities for Members and Officers) Order 2004</p>	<p>Formatted: Font: 14 pt</p>
<p>21. Advice on vires issues, maladministration, financial impropriety, probity and policy framework and budget issues to all members.</p>	<p>Department for Communities and Local Government and Local Government Ombudsman</p>	<p>Formatted: Font: 11 pt</p> <p>Deleted: 13. Make reports to Standards Committee and refer report of Ethical Standards Officer to Standards Committee for consideration.</p>
<p>22. Receiving requests for dispensation from restrictions on participation in meetings and the granting of such dispensations to councillors and co-opted councillors from requirements relating to interests set out in the Code of Members' Conduct.</p>	<p>Localism Act 2011 Section 33 and Dispensation Policy</p>	<p>Formatted</p> <p>Deleted: The Local Authorities (Code of Conduct) (Local Determination) Regulations 2003, SI 2003/1483 as amended by SI 2004/2617</p> <p>Formatted</p> <p>Deleted: ,</p> <p>Deleted: , Standards Board for England guidance.</p> <p>Formatted: Font: 11 pt</p> <p>Formatted: Font: 11 pt</p>
<p>23. Dealing with such other functions as may be prescribed for the Monitoring Officer in regulations to be made by the Secretary of State.</p>	<p>Localism Act 2011 Section 30 (3)</p>	<p>Formatted: Font: 11 pt</p> <p>Formatted: Font: 11 pt</p>



10. Liaison with Standards Board and Ethical Standards Officers

New ethical framework, practical implications

11. New ethical framework functions in relation to Parish Councils

Local Government Act 2000 Section 83(12)

Part 3F

(Article 13)

Scheme of Delegation to Officers

POWERS DELEGATED TO THE MONITORING OFFICER

1. To receive and grant as appropriate dispensations to councillors and co-opted members from requirements relating to interests set out in the Code of Members' Conduct.

In consultation with the Chairman of the Standards Committee and the Independent Person (and Parish Representative, if a parish matter.)

Also delegated to the Deputy Monitoring Officer.

2. To seek resolution of complaints alleging a breach of the relevant Code of Members' Conduct concerning members or co-opted members of the district or parish councils within the district without formal investigation wherever practicable.

In consultation with the Independent Person and Parish Representative, if a parish complaint.

Also delegated to the Deputy Monitoring Officer.

3. POWERS DELEGATED TO CHIEF EXECUTIVE

Function

Consultation

Also delegated to

3.1 Urgency

The taking on the Council's behalf of any action requiring urgency.

Leader or relevant Cabinet Member in each case where possible together with relevant Chairman of Scrutiny and Overview Committee where required by the rules on making of key decisions and where possible.

3.2 Staff



(a) The determination of the need to fill vacant posts and the advertising of any vacancy in the Council's establishment.	Corporate Management Team	
(b) The determination of any matter concerning the Council's recruitment and retention arrangements.		
(c) The determination of applications by members of staff for car purchase loans.	Principal Personnel Officer	Director of Corporate Resources
(d) The implementation of all the conditions of service on which the Council's staff are employed.	Director of Corporate Resources (where there are financial implications)	Head of Corporate Support Services
(e) The application of all legislation and regulations relating to industrial relations, employment and health and safety.		Head of Corporate Support Services
(f) The application of the Pensions Regulations including admissions to the scheme and authorisation of early retirement on grounds of ill-health.		
3.3 Planning Applications etc. The seeking of planning permission by the Council under the Town and Country Planning General Regulations 1992, Regulation 3		Head of Corporate Support Services
3.4 Elections		



<p>The taking of any action required in connection with the organisation or holding of neighbourhood, parish, district, county, general or European elections or referenda.</p>	<p>Democratic Services Officer</p>	<p>Director of Corporate Resources</p>
<p>3.6 Local Government Act 2000 section 92 Authorisation of payments or providing of other benefits</p>	<p>Monitoring Officer and Director of Corporate Resources</p>	
<p>3.7 Emergencies, disasters and emergency planning The exercise of the Council's powers in respect of emergencies, disasters and emergency planning.</p>		
<p>3.8 Regulation of Investigatory Powers Act 2000 Grant, review, renewal and cancellation of authorisations.</p>	<p>Council Solicitor</p>	
<p>3.9 Localism Act 2011 To exercise the powers in section 3A of the Local Government and Housing Act 1989 (grant and supervision exemptions from political restriction: England),</p>	<p>Monitoring Officer</p>	<p>Formatted: Font: Bold Formatted: Font: Not Bold Formatted: Font: Not Bold</p>



PROPER OFFICER APPOINTMENTS

14.1 Local Government Act 1972

	Proper Officer	Deputy
S83(1) (members' acceptance of office)	Chief Executive	Director of Corporate Resources
S84 (resignation of members)	Chief Executive	Director of Corporate Resources
S88(2) (filling of casual vacancy)	Chief Executive	Director of Corporate Resources
S89(1)(b) (filling of casual vacancy)	Chief Executive	Director of Corporate Resources
Part VA (access to information)	Chief Executive	Director of Corporate Resources
S115(2) (account for money)	Director of Corporate Resources	Head of Financial & Legal Services
S146(1)(a) & (b) (transfer of securities)	Director of Corporate Resources	Head of Financial & Legal Services
S151 (financial administration)	Director of Corporate Resources	Head of Financial & Legal Services
S191 (liaison with Ordnance Survey)	Chief Executive	Head of Strategic Planning & Performance
S225(1) (deposit of documents)	Chief Executive	Council Solicitor
S229(5) (public inspection of documents)	Chief Executive	Council Solicitor
S234(1) & (2) (authentication of documents)	Chief Executive	Council Solicitor
S236(9) (byelaws)	Council Solicitor	Chief Executive
S236(10) (byelaws)	Council Solicitor	Chief Executive
S238 (byelaws)	Chief Executive	Council Solicitor
Schedule 12 (Council minutes)	Chief Executive	Director of Corporate Resources
Schedule 14 Para. 25(7) (public health resolutions)	Chief Executive	Head of Planning and Environmental Services



14.2 Local Government Act 1974

Part 3 (Local Government Ombudsman)	Proper Officer	Deputy
	Monitoring Officer	Deputy Monitoring Officer

14.3 Local Government (Miscellaneous Provisions) Act 1976

S41 (evidence of minutes etc.)	Proper Officer	Deputy
	Chief Executive	Director of Corporate Resources

14.4 Local Government and Housing Act 1989

S2 (politically restricted posts) S4 (head of paid service) SS5, 5A (Monitoring Officer)	Proper Officer	Deputy
	Chief Executive	Director of Corporate Resources
	Chief Executive Monitoring Officer and Principal Solicitor (Monitoring and Standards)	Senior Solicitor (Monitoring and Standards)

14.5 Local Government (Committees and Political Groups) Regulations 1990

(political groups)	Proper Officer	Deputy
	Chief Executive	Director of Corporate Resources

14.6 Local Authorities (Members' Allowances) (England) Regulations 2003

(members' allowances)	Proper Officer	Deputy
	Chief Executive	Director of Corporate Resources



14.7. Public Health Act 1936

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	Proper Officer	Deputy in cases of emergency only
S79 (removal of noxious matter)	Head of Planning and Environmental Services	Environmental Health and Licensing Manager Principal Environmental Health Officers
S84 (verminous articles)	Head of Planning and Environmental Services	Environmental Health and Licensing Manager Principal Environmental Health Officers
S85 (verminous people)	Head of Planning and Environmental Services	Environmental Health and Licensing Manager Principal Environmental Health Officers

14.8. National Assistance Act 1948

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	Proper Officer	Deputy
S47 (removal of people in need)	Any person employed as a Consultant in Communicable Disease Control/Consultant in Health Protection at the Surrey and Sussex Health Protection Unit of the Health Protection Agency.	

14.9. Public Health Act 1961

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	Proper Officer	Deputy in cases of emergency only
S37 (verminous articles)	Head of Planning and Environmental Services	Environmental Health and Licensing Manager Principal Environmental Health Officers



14.10, Public Health (Control of Disease) Act 1984

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(infectious diseases and dead bodies)

Proper Officer	Deputy
Any person employed as a Consultant in Communicable Disease Control/Consultant in Health Protection at the Surrey and Sussex Health Protection Unit of the Health Protection Agency.	

14.11, The Health Protection (Notification) Regulations 2010

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(infectious diseases)

Proper Officer	Deputy
Any person employed as a Consultant in Communicable Disease Control/Consultant in Health Protection at the Surrey and Sussex Health Protection Unit of the Health Protection Agency.	

14.12, Food Safety Act 1990

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(food safety)

Proper Officer	Deputy in cases of emergency only
Head of Planning and Environmental Services	Environmental Health and Licensing Manager Principal Environmental Health Officers

14.13, Localism Act 2011

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(s 28(6) receipt of allegations for breach of Code of conduct)

(s 33(1) receipt of applications for Dispensation)

Proper Officer	Deputy in cases of emergency only
Monitoring Officer	Deputy Monitoring Officer
Monitoring Officer	Deputy Monitoring Officer



14.14 Any other provision for which arrangements are not specifically made under this Scheme of Delegation

Proper Officer Chief Executive	Deputy Director of Corporate Resources
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