

AGENDA

STANDARDS HEARING SUB-COMMITTEE MEETING

Date: Monday, 19 June 2017

Time: 10.00 am

Venue: Council Chamber, Swale House, East Street, Sittingbourne, Kent, ME10 3HT

Membership:

Councillors Paul Fleming, Sue Gent and Alan Horton.

Quorum = 3

Independent Person Mrs Sally Pirie (non-voting)

Pages

1. Election of Chairman

To elect a Chairman for this meeting.

2. Apologies for Absence and Confirmation of Substitutes

3. Fire Evacuation Procedure

The Chairman will advise the meeting of the evacuation procedures to follow in the event of an emergency. This is particularly important for visitors and members of the public who will be unfamiliar with the building and procedures.

The Chairman will inform the meeting whether there is a planned evacuation drill due to take place, what the alarm sounds like (i.e. ringing bells), where the closest emergency exit route is, and where the second closest emergency exit route is, in the event that the closest exit or route is blocked.

The Chairman will inform the meeting that:

(a) in the event of the alarm sounding, everybody must leave the building via the nearest safe available exit and gather at the Assembly points at the far side of the Car Park. Nobody must leave the assembly point until everybody can be accounted for and nobody must return to the building until the Chairman has informed them that it is safe to do so; and

(b) the lifts must not be used in the event of an evacuation.

Any officers present at the meeting will aid with the evacuation.

It is important that the Chairman is informed of any person attending who

is disabled or unable to use the stairs, so that suitable arrangements may be made in the event of an emergency.

4. Declarations of Interest

Councillors should not act or take decisions in order to gain financial or other material benefits for themselves or their spouse, civil partner or person with whom they are living with as a spouse or civil partner. They must declare and resolve any interests and relationships.

The Chairman will ask Members if they have any interests to declare in respect of items on this agenda, under the following headings:

(a) Disclosable Pecuniary Interests (DPI) under the Localism Act 2011. The nature as well as the existence of any such interest must be declared. After declaring a DPI, the Member must leave the meeting and not take part in the discussion or vote. This applies even if there is provision for public speaking.

(b) Disclosable Non Pecuniary (DNPI) under the Code of Conduct adopted by the Council in May 2012. The nature as well as the existence of any such interest must be declared. After declaring a DNPI interest, the Member may stay, speak and vote on the matter.

(c) Where it is possible that a fair-minded and informed observer, having considered the facts would conclude that there was a real possibility that the Member might be predetermined or biased the Member should declare their predetermination or bias and then leave the room while that item is considered.

Advice to Members: If any Councillor has any doubt about the existence or nature of any DPI or DNPI which he/she may have in any item on this agenda, he/she should seek advice from the Monitoring Officer, the Head of Legal or from other Solicitors in Legal Services as early as possible, and in advance of the Meeting.

Part B decision to be taken by the Sub-Committee

5. Consideration of Complaint No. SBC 1.17 - report

1 – 4

6. Exclusion of the Press and Public

To decide whether to pass the resolution set out below in respect of the following item: -

That under Section 100A(4) of the Local Government Act 1972, as amended, the press and public be excluded from the meeting for the following item of business on the grounds that it involves the likely disclosure of exempt information as defined in paragraph 1 of Part 1 of Schedule 12A of the Act.

1. Information relating to any individual.

Issued on Wednesday, 7 June 2017

The reports included in Part I of this agenda can be made available in **alternative formats**. For further information about this service, or to arrange for special facilities to be provided at the meeting, **please contact DEMOCRATIC SERVICES on 01795 417330**. To find out more about the work of this Committee, please visit www.swale.gov.uk

Chief Executive, Swale Borough Council,
Swale House, East Street, Sittingbourne, Kent, ME10 3HT

This page is intentionally left blank

STANDARDS HEARING SUB-COMMITTEE
--

Meeting Date	19 June 2017
Report Title	COMPLAINT OF MEMBER MISCONDUCT: SBC 1.17
Portfolio Holder	Leader
Report Lead	Donna Price, Interim Deputy Head of Legal Partnership (Solicitor) and Monitoring Officer (Swale)
Lead Officer	Robin Harris, Senior Lawyer
Key Decision	No
Classification	Open with Restricted Appendices
Forward Plan	Reference number N/A

Recommendations	<ol style="list-style-type: none"> 1. That the Standards Sub-Committee considers the Investigator's report and determines whether there has been any breach, or breaches, of the Code of Conduct 2. If the Standards Sub-Committee finds that there has been a breach, or breaches, of the Code of Conduct, that it should determine what sanction, if any, should be imposed and/or recommended to full Council.
------------------------	---

1. Purpose of Report and Executive Summary

- 1.1.1 This report concerns the Hearing of the Complaint of Member Misconduct: SBC 1.17. It presents the Investigating Officer's report, which found that there has been a breach of the Members' Code of Conduct. The Sub-Committee is asked to determine whether there has been any breach, or breaches, of the Code of Conduct. If it finds that there has been a breach, then to determine what sanction, if any, should be recommended to the Council.

2 Background

- 2.1 On the 5 January 2017 the previous Monitoring Officer in consultation with the Independent Person considered the complaint of alleged misconduct and referred the matter for investigation to an Independent Investigating Officer. The Decision Notice is at Appendix IV.

3 Proposals

- 3.1 The Investigating Officer found that there had been a breach of the Code. The Standards Hearing Sub-Committee is now being asked to hear the matter and decide whether or not there has been a breach, or breaches, of the Code of

Conduct. If it determines that there has been a breach, the Sub-Committee must consider what sanction to recommend, if any.

3.2 The Investigating Officer’s Report is attached as exempt Appendix I, including Appendices A-C. Members will see from the Pre-Hearing Process Summary and the email correspondence between the Subject Member and the Investigating Officer setting out the areas of dispute [Appendices II & III] that he disagrees with some of the Investigating Officer’s findings of fact and denies being in breach of paragraphs 5 and 8, including the principle of leadership of the Code of Conduct.

3.2 The Subject Member’s Declaration of Acceptance of Office and the Hearing Procedure for this Sub-Committee are attached as Appendices V and VI.

4 Alternative Options

4.1 There are no alternative options.

5 Consultation Undertaken or Proposed

5.1 Not applicable.

6 Implications

Issue	Implications
Corporate Plan	None
Financial, Resource and Property	The cost of servicing the Council's committees will be met within existing budgets.
Legal and Statutory	The proposals in this report relate to duties imposed by the Localism Act 2011.
Crime and Disorder	None identified at this stage
Sustainability	None identified at this stage
Health and Wellbeing	None identified at this stage
Risk Management and Health and Safety	None identified at this stage
Equality and Diversity	None identified at this stage

7 Exempt Appendices

7.1

- **APPENDIX I** – The Investigator’s report, including appendices (A-C)
- **APPENDIX II** – The pre-hearing process summary
- **APPENDIX III** – Email correspondence between the Subject Member and the Investigating Officer setting out the areas of dispute
- **APPENDIX IV** – Decision Notice
- **APPENDIX V** – Declaration of Acceptance of Office
- **APPENDIX VI** – Hearing Procedure

This page is intentionally left blank

FINAL REPORT

CONFIDENTIAL

LOCAL INVESTIGATION CONCERNING

**DISTRICT COUNCILLOR MIKE BALDOCK, A
MEMBER OF SWALE BOROUGH COUNCIL.**

W.D.Milne TD, LL.B, LARTPI
Solicitor

Investigating Officer
April 2017

CONTENTS

1. INTRODUCTION.....	3
2. METHODOLOGY.....	3
3. SUMMARY OF ALLEGATIONS AND RELEVANT PARTS OF THE CODE OF CONDUCT.....	3
4. THE LEGAL POSITION	5
5. EVIDENCE.....	5
6. CONCLUSION.....	7

Appendices A - C

a) Agreed notes of interview of Jo Millard, Senior Democratic Services Officer, together with attached email of 21.11.16 and completed attendance sheet.

b) Agreed notes of interview of Bob Pullen, Policy and Performance Officer, and attached note of events of 30.11.16.

c) Agreed notes of interview of the Subject Member, Councillor Mike Baldock.

1. INTRODUCTION.

1.1. This matter was referred to me by the Monitoring Officer of Swale Borough Council who in consultation with the Independent Person appointed me as Investigating Officer. I am the former head of Legal Services for Swale Borough Council and before my retirement from full time work had been in Local Government service for 35 years. I accordingly have considerable experience of Monitoring Officer / Standards issues and in the last 7 years or so have been appointed as Investigating Officer in over 40 similar Standards investigations.

1.2. At the start of the investigation the Monitoring Officer supplied me with a copy of the Decision Notice- Referral for Investigation- SBC1.17, together with a copy of the Complaint Review Initial Assessment and various background papers covering the subject matter of the complaint, which included a copy of the Swale Borough Council current Members Code of Conduct.

2. METHODOLOGY

2.1. In addition to considering the information specified above interviews were carried out with two Council officers and the Subject Member and after each interview a note of interview was prepared by myself as Investigating Officer and sent to the interviewees for consideration and comment. These notes of interview are now deemed to be agreed notes of interview. A further interview, not recorded in a formal note of interview, took place with the Complainant, the former Chief Executive of the Council.

2.2. The notes of interview referred to above are attached to the report and were used together with all the written material and the information gained from the non-recorded interview to assist in completing the Final Report and reaching a conclusion. All the appended material should be read in conjunction with the report.

3. SUMMARY OF ALLEGATIONS AND RELEVANT PARTS OF THE CODE OF CONDUCT.

3.1. The Complaint summary in Decision Notice SBC 1.17 states that

“The complaint relates to the retention by an elected member of a confidential paper presented to the Scrutiny Committee held on 29 November 2016. The meeting concerned the call-in of a Cabinet decision made on 9 November 2016 where the Cabinet considered a proposal for capital financing and investment in the town centre in Sittingbourne.

3.2. The recommendations made by Cabinet were such that to reach their decision confidential commercial and legally privileged information was part of that decision.

In addition, there was a need to provide further information to Scrutiny which related to the finance and business affairs of the authority, which is exempt information under the Local Government Act 1972.

3.3. The project, which was the subject of the capital finance and investment proposal, was at a very advanced and delicate stage of commercial negotiations. In particular, there were on going negotiations between the scheme developer and prospective tenants which were commercially sensitive. Matters of this type are exempt and confidentiality must be preserved.

3.4. In cases of this type, concerns are often expressed about the need to ensure that there is no leak of any information that could seriously prejudice the financial or business affairs of the authority. In the circumstances of this particular matter, it was considered appropriate to follow the custom and practice adopted previously whereby papers are issued on a numbered basis to the members who requested the call-in and scrutiny committee members and those members receiving them are required to sign for them. Any papers issued in this way are then to be handed back to Democratic Services on the night of the meeting to minimise any opportunity for exempt or commercially sensitive information being inadvertently shared to the detriment of the financial or business affairs of the authority. This process was confirmed by the Chairman of the meeting to all members present.

3.5. At the meeting Cllr Baldock apparently suggested that he had incorrectly brought the wrong set of confidential papers with him and asked the Policy and Performance Officer to issue him with another set. He passed his copy of the agenda and papers to Cllr Baldock. He was concerned that Cllr Baldock might pass back an unnumbered copy of the agenda pack and that the issue and return of papers should be properly reconciled by the Democratic Services Officer. Shortly after the meeting had closed it was noted that the numbered agenda pack issued to Cllr Baldock had been returned but that the Policy and Performance Officer's unnumbered paper had not been returned."

3.6. In the Decision Notice the Monitoring Officer identified the following paragraphs of the Swale Borough Council Code of Conduct for Members as being relevant namely paragraphs 5 and 8 relating to the statutory principles of the Code of Conduct and the general principle of leadership, which read as follows:

Paragraph 5 – Listening to the interests of all parties, including relevant advice from statutory and other professional officers, taking all relevant information into consideration, remaining objective and making decisions on merit.

Paragraph 8 – Behaving in accordance with all our legal obligations, alongside any requirements contained within this authority's policies, protocols and procedures, including on the use of the Authority's resources.

The principle of leadership: holders of public office should promote and support the principles contained within the Localism Act by leadership and example.

4. THE LEGAL POSITION.

4.1. The current standards regime was created under the provisions of the Localism Act 2011 and is contained within the provision of the Swale Borough Council Code of Conduct for Members as adopted by Swale Borough Council. The current updated Code is dated March 2013. The provisions of the Code should be interpreted in line with the provisions of the Council's constitution and accepted procedures and practices either in the written constitution or followed by long standing custom and practice.

4.2. The substance of the complaint against the Subject Member as seen at the start of the process are set out clearly and in some detail in paragraphs 3.1 to 3.5 of this report and are taken directly from the Decision Notice prepared by the Monitoring Officer. The whole issue of the necessity for confidentiality is being pursued in another forum and the subject of this investigation is accordingly restricted to the matter of the retention of the blue paper agenda.

4.3. In dealing with investigations such as this it is clear that each case must be decided on its merits after considering all the circumstances and evidence.

5. EVIDENCE.

5.1. This investigation relates to a single issue namely whether or not the Subject Member retained a copy of the blue paper confidential agenda of the Scrutiny Committee of 29th November 2016, contrary to specific instructions to return the same.

5.2. Jo Millard, the Democratic Services Officer, who was present at the meeting makes it clear in her notes of interview that due to the highly confidential nature of the subject of the call in, the entire agenda was on blue paper and that "in line with previous practice she circulated an email to all participating members on 21st November 2016 (see attached) making it clear how the system of numbering was to work and confirming that all copies of the numbered agendas would be collected at the end of the Scrutiny Committee meeting". To reinforce this position an attendance sheet was also created (see attached) showing which Councillors had been issued with the agenda pack and those who had returned the same at the end of the meeting.

5.3. Bob Pullen, the Policy and Performance Officer, who was also present at the meeting recalls that during his nine or so years at Swale Borough Council he can only recall one other case of numbered agendas, which was handled in exactly the same way as in the current case. He goes on to say that in his view the system is based on the old cabinet office system, which he encountered during his time in the Civil Service. From my perspective I recall the system being used on a number of occasions at Swale Borough Council and at other Councils during the course of my career. It is a system which is used sparingly and only in cases where those making the decision wish to make it clear that confidentiality is essential. Since the advent of modern

photo copying and mobile phone cameras it is of course increasingly difficult to ensure complete confidentiality in any given circumstances. The process nevertheless emphasises that confidentiality is essential and minimises the risk of publication by so doing.

5.4. Initially in this case there appears to be some confusion as to whether the Subject Member had retained a copy of the confidential agenda and the circumstances leading to the point at which the return of the same was requested. The Subject Member has, however, after a somewhat disingenuous start now clarified the situation in his notes of interview, making it clear that "he made a conscious decision to leave the agenda at home, as he expected to be pressurised to return the same at the end of the meeting". Earlier in the note he confirmed that he had received the email of 21st November 2016 from Jo Millard, the Democratic Services Officer, making it clear how the system of numbered agendas was to work. Later in his notes of interview after a detailed exchange of emails with the Monitoring Officer and others the Subject Member made it clear in his email of 2nd December 2016 that "you can remind me all you like about the missing paper, but until I am confident that the meeting held was legal and constitutional, I will need to hold on to a copy of the papers in the event that I take this matter further".

5.5. The Subject Member is therefore now absolutely clear about his intentions and actions which are on the face of it in complete contravention of the procedure for dealing with numbered confidential agendas. The Council's Constitution at part 4.2 deals with access to information procedure rules, including exclusion of access by the public to meetings and the question of confidential information. The written Constitution does not, however, contain detailed procedures for dealing with those rare occasions where a system of numbered confidential agendas is felt necessary. It must, however, be remembered that the way in which a Council is governed and operates is not and has never been entirely contained within a written document. Outside of the Constitution the Council is also subject to statute and the Common law and to time honoured custom and practice.

5.6. In my experience the procedure used by Swale Borough Council for dealing with extremely confidential matters by means of numbered agendas is common in local government, although generally used sparingly. It is also clear from the evidence of Bob Pullen that the system is very similar to that used by the Civil Service, particularly in the Cabinet Office.

5.7. The system was used in relation to the agenda for the Scrutiny Committee of 29th November 2016 and it is now clear that the Subject Member and all other members who attended the meeting were aware of how the system was to work. It is worth noting also that all other members at the meeting accepted the system and handed in their agenda packs at the end of the meeting or shortly thereafter. The question of confidentiality was debated and decided upon at the meeting as was the question of admittance of members of the public, but no other member sought to depart from the procedure outlined in Jo Millard's email of 21st November 2016. In the circumstances it is my view that the Subject Member is clearly in breach of paragraphs 5 and 8 of the Code of Conduct for Members. He has also in my view failed to live up to the principles of leadership by his marked failure to follow the accepted procedures.

6. CONCLUSION.

6.1. As is made clear from the evidence section it is my view that there has been a clear breach of paragraphs 5 and 8 of the Members Code of Conduct. Similarly for the reasons stated his actions have been inconsistent with the principles of leadership.

W D Milne

Solicitor
April 2017.

Local Investigation- Interview with Jo Millard held at Swale House, East Street, Sittingbourne, Kent on Monday 16th January 2017 between 10.00 and 10.45 hours.

1. At the start of the interview I referred to the Swale Borough Council Decision Notice – Referral for Investigation –ref SBC 1.17 and to the Complaint Review Initial Assessment- Monitoring Officer Review and read to you sections of the same in order to clarify the scope of the investigation.
2. You explained that you are the senior Democratic Services Officer in the Democratic Services section of Swale Borough Council which consists of four officers and you frequently attend full Council, Cabinet, Scrutiny and other committees. You have been employed as a local government officer for 27 years and have been in your current role for about fifteen months. The incidents which form the basis of the complaint took place at the meeting of the Scrutiny Committee held on Tuesday 29th November 2016 in the Council Chamber at Swale House. The meeting was unusual from your point of view in that for the first time in your fifteen months experience a system of numbered agendas was put into operation.
3. The reason for using the system of numbering was because the subject of the call-in was highly confidential and the entire agenda was on blue paper, which indicated its confidential nature. At the time of issue it was the only agenda entirely on blue paper, although other agendas contained some blue paper items. In line with previous practice you circulated an email to all participating members on 21st November 2016 (see attached) making it clear how the system of numbering was to work. You also produced an attendance sheet, also attached to these notes, indicating by number the names of the individual Councillors who received the agenda. The ticks to the left hand side of the sheet indicate the initial agenda distribution and those on the right the members who returned the numbered documents at the meeting or in some cases shortly thereafter. The only annotation is next to the Subject Member's name where the word "check" was written. You have since confirmed that the numbered agendas were posted out to members who sit on the Scrutiny Committee and invited members on Monday 21st November 2016.
4. At the meeting on 29th November 2016 some additional numbered papers were issued to attending members and in all cases, except in the case of the Subject Member, the same were individually numbered by you personally by hand.
5. On the night in question the Subject Member spoke to Bob Pullen, the Policy and Performance Officer, regarding his problem concerning the agenda. He approached Bob Pullen, who was sitting next to you at the meeting, in a brief moment when you had been called away by the Monitoring Officer. I understand that he explained to Bob Pullen that he had inadvertently left his numbered confidential agenda at home and Bob subsequently loaned him his own unnumbered copy for the duration of the meeting. Bob explained the situation to you as soon as you returned to your seat and you tried to find the Subject

Member in order to number his agenda, but were unable to do so before the start of the meeting. During the course of the meeting you informed the Monitoring Officer and the Chief Executive about the situation.

6. At the close of the meeting you collected in the numbered agendas from the individual Councillors and as previously explained ticked the agenda distribution list to signify return. In the case of the Subject Member he returned an agenda which at that stage appeared to be numbered in the same way as the original i.e. with the number 1 appearing on the same. This meant that a copy was not returned and that the copy which had been returned was either the original numbered copy or the blank copy which had been numbered during the course of the meeting. In your view it was the latter as you did not recognise your hand writing in the way in which the copy had been numbered and accordingly marked the sheet with the word "check" to remind yourself to investigate the situation further. You said to the Subject Member words to the effect that the agenda was not his original copy and he smiled at you and moved away quickly. You accordingly reported the situation to the Monitoring Officer and Chief Executive.

7. At the close of the meeting one other member, Councillor Peter Marchington, did not return a numbered agenda. He explained that he had inadvertently attended the meeting without his original copy and was able to participate by sharing the copy of one of his colleagues. He was not issued a spare agenda. In the circumstances he was asked to return the numbered agenda as soon as possible which he did in the course of the next few days.

8. Since the interview you have confirmed by email that whilst the method of numbering confidential agenda and collecting at the end of the meeting is not set out in the Council's constitution, the system has been used effectively on other occasions.

These are the points you wish to make with regard to the complaint.

W D Milne
Solicitor
24th January 2016.

Jo Millard

From: Jo Millard
Sent: 21 November 2016 15:52
To: Democratic Services (SBC)
Subject: CALL IN OF CABINET DECISION ON CAPITAL FINANCING AND INVESTMENT -
SCRUTINY AGENDA 29.11.16
Attachments: Call in Form for Scrutiny 29.11.16.pdf

Dear Scrutiny Committee Member

The Scrutiny Meeting on 29 November 2016 will be held in closed session and copies of the Agenda will only be available in advance to those Members of the Scrutiny Committee and those invited as witnesses. Each Scrutiny Agenda will be numbered and I will collect all copies of the Agenda at the end of the Scrutiny meeting. Any visiting Members will receive a numbered copy of the Agenda at the meeting which will also be collected at the end of the meeting. Your copy of the Agenda will be in your despatch.

Please find attached a copy of the call-in form for your information.

Best wishes.

Jo

Jo Millard | Senior Democratic Services Officer | Swale Borough Council
Swale House East Street Sittingbourne Kent ME10 3HT | Tel: 01795 417360 | Email:
jomillard@swale.gov.uk | Web: www.swale.gov.uk

ATTENDANCE SHEET - AGENDA DISTRIBUTION
Meeting of Scrutiny Committee
Extraordinary Meeting
29/11/2016, 19:00

Meeting started _____

Meeting ended _____

Name		Signature
✓ Councillor Mike Baldock	(1)	✓ - check
✓ Councillor Andy Booth	(2)	✓
✓ Councillor Lloyd Bowen	(3)	✓
✓ Councillor Derek Conway	(4)	✓
✓ Councillor Mike Dendor	(5)	✓
✓ Councillor Mark Ellen	(6)	✓
✓ Councillor Mick Galvin	(7)	✓
✓ Councillor Mike Henderson	(8)	✓
✓ Councillor Ken Ingleton	(9)	✓
✓ Councillor Nigel Kay	(10)	✓
✓ Councillor Samuel Koffie-Williams	(11)	✓
✓ Councillor Peter Marchington	(12)	✓
✓ Councillor Ben Stokes	(13)	✓

✓ COUNCILLOR DUNCAN
DEBORA WHALLEY

(14)

✓

✓ COUNCILLOR ANDREW
BOWLES

(15)

✓

✓ COUNCILLOR GERRY LOWN

(16)

✓

✓ COUNCILLOR ROSE THORPE

(17)

✓

✓ COUNCILLOR MARGARET BERRY

(18)

✓

✓ CLLR SHYAN WHELAN

(19)

✓

✓ CLLR ANGEA HARRISON

(20)

✓

CLL	TINA	BOSTH	(21)	✓
CLL	ALAN	HORTON	(22)	✓
CLL	JAMES	MUNOT	(23)	✓
CLL	CAMERON	BEAL	(24)	✓
CLL	SARAH	ALPEIQE	(25)	✓
CLL	PAUL	FLOWING	(26)	✓
CLL	ROGER	CLARK	(27)	✓
CLL	SHE	GENIT	(28)	✓
CLL	TED	WILCOX	(29)	✓
JR	KEN	PUGH	(30)	✓
CLL	MICG	WHITING	(31)	✓
CLL	MICK	MANFORD	(32)	✓

Local Investigation-Interview with Bob Pullen held at Swale House, East Street, Sittingbourne, Kent on 16th January 2017 between 10.45 and 11.20 hours.

1. At the start of the interview I referred to the Swale Borough Council Decision Notice – Referral for Investigation –ref SBC 1.17 and to the Complaint Review Initial Assessment- Monitoring Officer Review and read to you sections of the same in order to clarify the scope of the investigation.
2. You explained that you are the Policy and Performance Officer at Swale Borough Council and have been in post since 2007. Prior to 2007 you were a Civil Servant doing a similar kind of work. About 50% of your time is devoted to Scrutiny Committee support and you also deal with Policy Development, Cabinet Support etc. During your time at Swale you recall only one other case of numbered reports being issued to the Scrutiny Committee members, which was handled in exactly the same way as in the current case. In your view the system is based on the old cabinet office system, which you encountered during your time in the Civil Service.
3. The subject of the complaint took place at the meeting of the Scrutiny Committee on 29th November 2016 and the following morning after that meeting you drafted a note of events, which was circulated to the Monitoring Officer. That note is attached to these notes of interview and should be read in conjunction with the same.
4. By way of further clarification you made it clear that after the Subject Member had been passed your unnumbered copy of the agenda pack he left the chamber, as he was involved in the debate about public admission to the meeting. You passed your unnumbered copy of the agenda pack to the Subject Member as the Democratic Services Officer was busy distributing copies of other papers to members, discussing issues about public attendance with the Monitoring Officer and was therefore unable to number the unnumbered agenda pack before the start of the meeting.

These are the points you wish to make with regard to the complaint.

W D Milne
Solicitor.
24th January 2017.
Amended 31st January 2017

Blue paper at Scrutiny Committee call-in – 29 November 2016

I logged off and shutdown my computer at 6.49pm before taking my place in the Council Chamber ready for the call-in of the Capital Finance and Investment Cabinet decision to be heard at Scrutiny Committee on 29 November. Jo had issued me with the blue agenda pack containing the confidential report soon after the agenda had been published and in common with agenda packs issued to officers this was unnumbered. I had kept the report under lock and key in my desk pedestal at all times.

Earlier in the evening, the Vice-Chairman of the Scrutiny Committee had called into my office to request a hard copy of the Chairman's brief for the evening which I supplied to him. The Vice-Chairman then had a mini panic as he thought he had brought the wrong blue agenda pack to the meeting, but on closer inspection of his brief case found that he did indeed have the agenda and report pertaining to the Scrutiny Committee call-in. This alerted me to the fact that more than one set of agendas/reports on blue paper had recently been circulated by Democratic Services.

Shortly after taking my place in the Council Chamber, Cllr Baldock said he had brought the wrong set of blue papers with him and could I issue him with an additional set. I explained that Jo, who was busy issuing copies of the call-in form to all members, was issuing individually numbered copies to all members who were attending. However, given that I was already aware that more than one set of blue papers was in circulation to members, the fact that Cllr Baldock is on so many of the Council's Committees, and in order to be helpful, I passed Cllr Baldock my copy of the agenda pack and asked that he return it to Jo at the end of the evening. Jo issued me with a further unnumbered agenda pack.

I passed a note to Jo shortly after the meeting started to ask her to watch out for Cllr Baldock passing back an unnumbered copy of the agenda pack at the end of the meeting so that she could tally which members and officers had returned the agenda packs.

Shortly after the meeting had closed, it was noted that the numbered agenda pack issued to Cllr Baldock with Despatch had been returned. Jo said she would contact Cllr Baldock to request that he returned the unnumbered agenda pack.

The above information in summary was conveyed to the Chief Executive and Monitoring Officer straight after the meeting.

Bob Pullen

Policy and Performance Officer

Swale Borough Council

30 November 2016

Local investigation- Interview with Councillor Mike Baldock held at Swale House, East Street, Sittingbourne, Kent on Monday 30th January 2017 between 10.00 and 10.45 hours.

1- At the start of the interview I referred to the Swale Borough Council Decision Notice – Referral for Investigation- ref SBC1.17 and you confirmed that you had received a copy from the Monitoring Officer. During the course of the interview I read through the sections of the same in order to clarify the scope of the investigation.

2. You explained that you had been a Swale Borough Councillor since 2015 and are officially the leader of the opposition and the UKIP Group. You are also a KCCC Member and were elected to that body in May 2013. With regard to the incident in question you confirmed that you attended the meeting of the Scrutiny Committee on Tuesday 29th December 2016 and made a conscious decision to leave the agenda at home, as you expected to be pressurised to return the same at the end of the meeting.

3. You had received a copy of the email of 21st November 2016 from Jo Millard, the Democratic Services Officer, in which it was made clear that only numbered copies of the agenda would be issued which would be collected at the end of the meeting. You disagreed fundamentally with such a process. In your opinion no constitutional right existed requiring you to return the numbered copy, especially as it was not just the particular item which was on blue paper, but the entire agenda including the contents page.

3. In your opinion any attempt at confidentiality was negated by the fact that the agenda was issued a week before the meeting and could have been photocopied by any recipient at any time. In your view in such circumstances it was not a reasonable request to require the paper to be returned.

4. You had never encountered the system of numbered agendas before and felt that if such confidentiality was required the only way to achieve the same would have been to hand out the agendas at the start of the meeting and recover the same at the end thereby ensuring that no copies could be made.

5. The subject matter of this investigation is concerned purely with the non return of a numbered confidential document, but in your view involved wider issues such as the need for confidentiality in the first place and restricted public admittance to the meeting which points you are pursuing by other means. You have always been of the view that true confidentiality should be imposed only in a very limited number of circumstances and this case was not one of those. You always retain your agendas in case in the future you are called upon to justify your action. In your view in such a situation it is difficult to justify such actions at a later date if you do not have access to the original agenda. In this case as you are in disagreement over the extent of the confidentiality required you felt that it was essential to retain the original agenda to support future arguments.

6. I confirmed that I had seen the email trail with the Monitoring Officer and others relating to the confidentiality issue and the non-return of the agenda and you made it clear that in your view you had not received adequate replies to your questions relating to confidentiality. In that email exchange you confirmed that you had been asked on more than one occasion to return the document and had refused to do so. For the avoidance of doubt you summarised your position in your email to the Monitoring Officer of 2nd December 2016 in which you stated that “you can remind me all you like about the missing paper, but until I am confident that the meeting held was legal and constitutional, I will need to hold on to a copy of the papers in the event that I take this matter further.”

7. At the meeting on 29th November 2016 the Democratic Services Officer was busy and you recall asking the lady sitting next to her if you could have a spare copy of the agenda. Bob Pullen looked up and said he had got one and handed you his own unnumbered copy. At the start of the meeting other issues were at stake such as the admittance of members of the public and confidentiality. With regard to confidentiality you recall supporting Mike Henderson, a fellow Councillor, in his argument about the need for the matter to be on blue paper. At the end of the meeting you handed in the copy which had been given to you by Bob Pullen, having numbered the same yourself with the number 1, being the number of the original copy issued to you.

These are the points you wish to make with regard to the complaint.

W D Milne
Solicitor
1st February 2017.

Pre-hearing process summary

✓	Authority	Swale Borough Council
✓	Subject Member	Councillor Mike Baldock
✓	Complainant	Former Chief Executive
✓	Case ref. no	SBC 1.17
✓	Monitoring Officer	Donna Price
✓	Legal Advisor	Robin Harris
✓	Dem Services Officer/Clerk	A Democratic Services Clerk
✓	Pre-hearing process summary produced	6 June 2017
✓	Date, time and place of hearing	10.00am - Monday, 19 June 2017, Civic Offices, Swale House, East Street, Sittingbourne, ME10 3HT
✓	Summary of the complaint	<p>The allegation is made against Councillor Mike Baldock.</p> <p>The complaint relates to the retention by an elected member of a confidential paper presented to the Scrutiny Committee held on 29 November 2016. The meeting concerned the call-in of a Cabinet decision made on 9 November 2016 where the Cabinet considered a proposal for capital financing and investment in the town centre in Sittingbourne</p>
✓	Relevant section or sections of the Code of Conduct	<p>Paragraph 5 - Listening to the interests of all parties, including relevant advice from statutory and other professional officers, taking all relevant information into consideration, remaining objective and making decisions on merit.</p> <p>Paragraph 8 – Behaving in accordance with all our legal obligations, alongside any requirements contained within this authority’s policies, protocols and procedures, including on the use of the Authority’s resources.</p> <p>The principle of leadership: holders of public office should promote and support the principles contained within the Localism Act by leadership and example.</p>
✓	Findings of fact in the investigation report that are agreed	Councillor Baldock was elected on 7 May 2015 and admitted on to Swale Borough Council on 11 May 2015 as evidenced by the Declaration of Acceptance of Office of the same date. Councillor Baldock continues to be bound by the Council’s Code of Conduct.

✓	Findings of fact in the investigation report that are not agreed	The main areas of disagreement are set out in the email correspondence between Councillor Baldock and the Investigating Officer – attached as Appendix III.
✓	Whether subject member or monitoring officer or legal advisor will attend or be represented	Councillor Baldock has said that he will be attending the hearing. The Monitoring Officer and Legal Advisor will be attending.
✓	Names of any witnesses who will be asked to give evidence	Councillor Roger Truelove
✓	Subject Member's representation on other evidence relevant to the complaint	Mr John Greenhill will be presenting Councillor Baldock's case
✓	Outline of the proposed procedure for the hearing	Attached as Appendix VI

From: **Mike Baldock (Cllr)** MikeBaldock@swale.gov.uk
Subject: Re: Local Investigation.
Date: 31 March 2017 at 08:41
To: Duncan Milne [REDACTED]



Dear Mr Milne,

I note your findings and am surprised that you do not consider several issues I raised in our meeting.

You do not consider whether the information on the blue papers could reasonably be said to fit the criteria for 'exempt' information - your comments in para 3.2 and 3.3 refer to the Local Govt Act of 1972, but it is difficult to see how the blue paper comments themselves fall within that definition. The definition is very strict and very limited. Your description of the information as 'extremely confidential' is frankly ridiculous and several other councillors have challenged the very need for this information to even be confidential.

You fail to explain how the requirement to hand the papers in at the end of the meeting is an essential part of any attempt to "minimise any opportunity for exempt or commercially sensitive information being inadvertently shared to the detriment of the financial or business affairs of the authority", given several people had copies several days in advance and could have made photocopies of them. This is a crux issue which you fail to engage with - there has to be a reason for a request and the reason given to this request fails to address the reason for the request - therefore it becomes an unreasonable request. If the papers had only been issued at the start of the meeting and collected at the end, then there could be an argument about preventing leakage - but this is not what happened and so the argument falls. As I said, you fail to address this crux issue and do not consider this element of reasonableness.

Put bluntly, if someone had wanted to copy the papers for potential exposure they could have done so and still handed the original back in. Ergo the handing in of those papers had nothing to do with securing the information and if Councillors can be trusted not to copy and release them before the meeting, there is no reason not to trust them afterwards. The whole exercise is a sham - a point you again fail to engage with. You simply go on about obeying orders with no consideration of an individual's right to challenge those orders. We do not live in a dictatorship, and we do have rights.

You fail to even discuss my point regarding the legality of the meeting and the actions of the Council - and consequently my need to hold onto a copy of the papers until that matter had been settled - there have been and may still be challenges to what happened that evening, and the papers may yet be important evidence. How can that evidence be produced if I hold no copy?

You make great relevance of the so-called custom of the council in these cases - a custom I have never previously witnessed. You make the somewhat dubious assessment therefore that I should follow without question a practice that hadn't been used before in my time on the Council.

At para 5.5 you accept the Constitution does not provide for this activity - instead you say "Outside of the Constitution the Council is also subject to statute and the Common law and to time honoured custom and practice." I would very much doubt that I have failed a requirement under a statute or piece of Common Law, and the phrase about time honoured custom and practice is simply an appeal to vagueness to justify your findings and based on nothing more than an apparent desire to simply back the Council up. If this was so vital a process, the Council should attempt to write it into the Constitution, going through members first. That is democracy, not making things up as you feel like it.

You do not consider my point about Councillors having a legal right to information regarding

decisions they make or the fact that even the agenda was on blue paper - with a number on it - when that should be publically available information. The meeting was after all supposedly initially open to the public, all be it that the Council operated illegally by banning members of the public from attending the meeting. Another point you fail to mention, despite it being very pertinent to the reasons for me needing to keep a copy of the papers.

Your comment "The question of confidentiality was strongly debated and decided upon at the meeting as was the question of admittance of members of the public" is frankly embarrassingly wrong. The chair allowed no debate of the admittance of the public and I was shouted down when I tried to raise it. To describe the question of confidentiality as being 'strongly debated' beggers belief - one Councillor challenged it, the Chair refused to listen to him and noone else was allowed to speak on the subject. How on earth does that fit your description of being 'strongly debated'? On what evidence have you based this expert opinion?

In short, your findings ignore all the inconvenient points I made and simply gloss over the way the Council has acted. As such, it is a wholly biased report and simply confirms to me that the whole system of accountability and transparency in local governance is failing and needs a serious overhaul.

regards
Mike Baldock

From: Duncan Milne [REDACTED]
Sent: 26 March 2017 20:34
To: Mike Baldock (Cllr)
Subject: Re: Local Investigation.

Dear Councillor Baldock

Thank you for your email of 22nd March 2017 the contents of which I note. With regard to your initial response to the Draft Final Report I confirm that it will be my intention to respond to all points raised at the end of the consideration period i.e after the deadline of 31st March 2017.

Kind regards

W D Milne.

On 22 Mar 2017, at 17:11, Mike Baldock (Cllr) <MikeBaldock@swale.gov.uk> wrote:

Dear Mr Milne,
I have only given this a cursory examinations, and will write again with further observations if I can be bothered. I note the the 31st March deadline.

I note this statement:

"5.4. Initially in this case there appears to be some confusion as to whether the Subject Member had retained a copy of the confidential agenda and the circumstances leading to the point at which the return of the same was requested. The Subject Member has,

however, after a somewhat disingenuous start now clarified the situation in his notes of interview, making it clear that "he made a conscious decision to leave the agenda at home, as he expected to be pressurised to return the same at the end of the meeting".

I would ask what exactly the 'confusion' was that you believe occurred. As I never denied having retained a copy of the papers I fail to understand what you are on about. I would also query as to what exactly you mean by disingenuous. Again, I explained the situation when asked.

If the rest of the report is absurd and removed from reality as this paragraph it will just underline what a self-serving and pointless exercise this has been.

regards
Mike Baldock

From: Duncan Milne [REDACTED]
[REDACTED]

Sent: 21 March 2017 19:09
To: Mike Baldock (Cllr)
Subject: Local Investigation.

Dear Councillor Baldock

I write further to an allegation that you have failed to comply with Swale Borough Council Code of Conduct, and as you are aware, that allegations has been referred to me for investigation.

I am writing to you to let you know my draft findings and the reasons why I have reached them.

If you choose to make any comments on the draft report, it would be most constructive to focus only on matters that I have relied upon to reach my findings.

Please note that the report is confidential at this stage and should not be disclosed to any party save your own legal advisor.

It should be noted that this is a draft report and does not necessarily contain my final findings.

If you wish to comment on the draft report and finding, please let me have your comments by email on or before Friday 31st March 2017. If I have not heard from you by that date I shall proceed to issue the final report.

Should you require any clarification on the points raised in this letter, please contact me on 07765868649 or by email.

Yours sincerely

W D Milne
Investigating Officer.

This email and any files transmitted with it are confidential and intended solely for the use of the individual or entity they are addressed. If you have received this email in error please notify postmaster@swale.gov.uk

This email and any files transmitted with it are confidential and intended solely for the use of the individual or entity they are addressed. If you have received this email in error please notify postmaster@swale.gov.uk

Reply to response made by Councillor Baldock to Draft Final Report.

1. In my view, many of the points you make do not raise any new issues or evidence but merely emphasise your disagreement with my interpretation of the facts as Investigating Officer. Indeed, many of the arguments put forward have been rehearsed before during the course of the investigation and answered in the Draft Final Report.

2. With regard to the specific points raised in your email of 22nd March 2017 I wish to make it clear that the word 'disingenuous' should be given its ordinary or dictionary meaning such as that contained within the New Oxford Dictionary of English. The reason I used the term 'confusion' in paragraph 5.4 of the report is because, although you later made it clear that you did not take your agenda to the meeting as you expected to be pressurised to return the same, that was not the view of the other witnesses as indicated in the notes of interview. They were both of the impression that you required an extra set of minutes at the meeting because you had inadvertently left your own agenda at home. Similarly an unnumbered copy of the agenda was issued to you, but was returned marked number 1. In the circumstances I feel that it is fair to say that initially some confusion existed which was not clarified fully until the time of your interview.

3. With regard to your email of 31st March 2017 I must make it clear that as stated at paragraph 4.2 of my report "the issue of the necessity for confidentiality is being pursued in another forum and the subject of this investigation is accordingly restricted to the matter of the retention of the blue paper agenda". By way of further clarification it is stated in paragraph 5.1 of the report that "the investigation relates to a single issue namely whether or not the Subject Member retained a copy of the blue paper confidential agenda of the Scrutiny Committee of 29th November 2016, contrary to specific instructions to return the same".

4. In the same email you also question the concept of custom and practise in relation to the return of blue paper agendas in certain circumstances. In response to this I would make the point that it is a generally accepted practise as indicated in the report and one which was adhered to by all other members of the committee in question except for yourself.

5. Finally in the penultimate paragraph of your email you take exception to the fact that in your view the question of confidentiality and admittance to the meeting of members of the public was 'strongly' debated. It is clear to me that some debate took place but in order to be as accurate as possible I take your point and have removed the word 'strongly' from the Final Report.

6. I must therefore inform you that having considered your responses in their entirety I do not wish to alter my conclusions in any way and that the Draft Final Report, with the deletion of the word 'strongly', accordingly becomes the Final Report. A copy is attached for your use in which the only changes are the removal of the word Draft and a change to the date of the issue of the same. The appendices are the same as those you have already received.

7. The Final Report will now be considered further by the Monitoring Officer in consultation with the Independent Person of Swale Borough Council together with your responses to the Draft Final Report and my reply to the same.

I trust the position is clear to you.

W D Milne
Investigating Officer.
5th April 2017.

DECISION NOTICE: Referral for Investigation

Reference SBC 1.17

Persons receiving this Notice should treat it as confidential. Information in the Notice, or about it, is likely to contain personal details of individuals and will be regarded as private and confidential. Any such information must not be released unless the matter is first discussed with the Monitoring Officer.

Complaint

The Monitoring Officer received a complaint of alleged misconduct by Councillor Baldock. Councillor Baldock is a member of Swale Borough Council.

Summary of the Complaint

The complaint relates to the retention by an elected member of a confidential paper presented to the Scrutiny Committee held on 29 November 2016. The meeting concerned the call-in of a Cabinet decision made on 9 November 2016 where the Cabinet considered a proposal for capital financing and investment in the town centre in Sittingbourne.

The recommendations made by Cabinet were such that to reach their decision confidential commercial and legally privileged information was part of that decision. In addition, there was a need to provide further information to Scrutiny which related to the finance and business affairs of the authority, which is exempt information under the Local Government Act 1972.

The project, which is the subject of the capital finance and investment proposal, is at a very advanced and delicate stage of commercial negotiations. In particular, there are ongoing negotiations between the scheme developer and prospective tenants which are commercially sensitive. Matters of this type are exempt and confidentiality must be preserved.

In cases of this type concerns are often expressed about the need to ensure that there is no leak of any information that could seriously prejudice the financial or business affairs of the authority. In the circumstances of this particular matter, it was considered appropriate to follow the custom and practice adopted previously whereby papers are issued on a numbered basis to the members who requested the call-in and scrutiny committee members and those members receiving them are required to sign for them. Any papers issued in this way are then to be handed back to Democratic Services on the night of the meeting to minimise any opportunity for exempt or commercially sensitive information being inadvertently shared to the detriment of the financial or business affairs of the authority. This process was confirmed by the Chairman of the meeting to all members present.

At the meeting Cllr Baldock suggested that he had incorrectly brought the wrong set of confidential papers with him and asked the Policy and Performance Officer to issue him with another set. He passed his copy of the agenda and papers to Cllr Baldock. He was concerned that Cllr Baldock might pass back an unnumbered copy of the agenda pack and that the issue and return of papers should be properly

reconciled by the Democratic Services Officer. Shortly after the meeting had closed it was noted that the numbered agenda pack issued to Cllr Baldock had been returned but that the Policy and Performance Officer's unnumbered paper had not been returned.

Consultation with Independent Person

It was considered that,

- Councillor Baldock was asked on three separate occasions to return the document and reminded of his responsibility to preserve confidential information under the Code of Conduct
- There appeared to be a deliberate act by Cllr Baldock to secure an additional copy of the confidential paper considered at that Scrutiny Committee
- The standard of behaviour expected of a senior member of the authority
- Given his actions to date Cllr Baldock is not behaving in accordance with all the custom and practice obligations. Taken these together, it appears to indicate that he is not demonstrating the leadership required.

As such it was decided that there was a potential breach of the Code of Conduct and of sufficient seriousness to warrant investigation.

Decision

Having carefully considered the views expressed both the complainant and in the emails from the subject member and taking into account the views of the Independent Person, the Monitoring Officer has decided to refer the matter for investigation.

Reason for Decision

The Monitoring Officer has considered the alleged breach of conduct with regards to the retention by Cllr Baldock of confidential information and believes that, if proven, such conduct may amount to a breach of the following paragraphs of the Code of Conduct:

Paragraph 5 – Listening to the interests of all parties, including relevant advice from statutory and other professional officers, taking all relevant information into consideration, remaining objective and making decisions on merit.

Paragraph 8 – Behaving in accordance with all our legal obligations, alongside any requirements contained within this authority's policies, protocols and procedures, including on the use of the Authority's resources.

The principle of leadership: holders of public office should promote and support the principles contained within the Localism Act by leadership and example

Notification of Decision

This decision notice is sent to the person making the allegation and the member against whom the allegation was made

Right of Review

There is no right of review against the Monitoring Officer's decision.

Additional Help

If you need additional support in relation to this decision notice or future contact with us, please let us know as soon as possible. If you have difficulty reading this decision notice, we can make reasonable adjustments to assist you, in line with the requirement of the Equality Act 2010. We can also help if English is not your first language.

If you require additional assistance, in the first instance please contact the Monitoring Officer on 01795 417269.

Signed.....
Name: Mark Radford
Monitoring Officer of Swale Borough Council

11 January 2017
Date.....

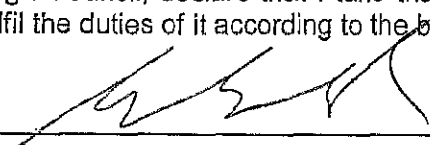
CONFIDENTIAL

SWALE BOROUGH COUNCIL
DECLARATION OF ACCEPTANCE
OF OFFICE OF COUNCILLOR

I, MIKE BALDOCK , having been elected to the office of Councillor for the
BORDEN & GROVE PARK Ward

of Swale Borough Council, declare that I take that office upon myself, and will duly and faithfully fulfil the duties of it according to the best of my judgement and ability

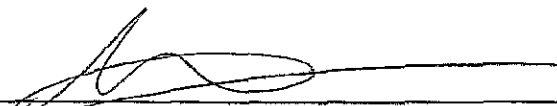
Signed



Dated

11/5/2015

1. This declaration was made and subscribed before me



Proper Officer of Swale Borough Council

or

2. This declaration was made and subscribed before me

(i) Two Members of Swale Borough Council

or

(ii) A Justice of the Peace or Magistrate in the United Kingdom

or

(iii) A Commissioner appointed to administer oaths in the Supreme Court

PART 4.6 - STANDARDS COMMITTEE PROCEDURE RULES

The Pre-Hearing Process

Procedure for Local Standards Hearings

Pre-Hearing Process

Upon receipt of the final report of the Investigating Officer, including a finding that the Subject Member failed to comply with the Code of Conduct for Members, or where the Standards Committee determines that the matter should be considered at a formal hearing, the Monitoring Officer shall:

- (a) Arrange a date for the Standards Committee's hearing;
- (b) Send a copy of the report to the Subject Member and advise him of the date, time and place for the hearing;
- (c) Send a copy of the report to the Complainant and advise him of the date, time and place for the hearing;
- (d) Where the complaint relates to a Parish/Town Councillor, notify that Parish or Town Council of the date, time and place of the hearing;
- (e) Request the Subject Member to complete and return the Pre-Hearing Forms within 14 days of receipt;
- (f) In the light of any Pre-Hearing Forms returned by the Subject Member, determine whether the Standards Committee will require the attendance of the Investigating Officer and any additional witnesses at the hearing to enable it to come to a properly considered conclusion at the hearing, and arrange for their attendance;
- (g) Prepare a Pre-Hearing Summary Report setting out the course of the allegation, investigation and Pre-Hearing Process and high-lighting the issues which the Standards Committee will need to address, and
- (h) Arrange that the agenda for the hearing, together with the Pre-Hearing Summary Report and copies of any relevant documents are sent to:
 - (i) All Members of the Standards Committee who will conduct the hearing;
 - (ii) The Subject Member;
 - (iii) The Complainant, and
 - (iv) The Investigating Officer.

The Hearing Procedure

Standards Committee or any constituted Sub Committee

Procedure for Local Standards Hearings

1. Interpretation

- 1.1. "Subject Member" means the Member of the Authority who is the subject of the allegation being considered by the Hearings Panel, unless stated otherwise. It also includes the Subject Member's nominated representative.
- 1.2. "Complainant" means the person who has submitted the complaint in respect of the Members alleged breach of the Code.
- 1.3. "Investigating Officer" references to the Investigating Officer mean the person appointed by the Monitoring Officer to undertake that investigation which may include the Monitoring Officer, and his or her nominated representative.
- 1.4. "The Matter" is the subject matter of the Investigating Officer's report.
- 1.5. "The Hearings Panel" refers to a Sub-Committee of the Standards Committee which it has delegated the conduct of the hearing.
- 1.6. "Chairman" refers to the person presiding at the hearing.
- 1.7. "Independent Person" refers to a non voting person who has been appointed, following advertisement, by a positive vote from a majority of all the Members of Council and who's views must be sought and taken into account.
- 1.8. "The Committee Support Officer" means an officer of the Authority responsible for supporting the Hearings Panel's discharge of its functions and recording the decisions of the Hearings Panel.
- 1.9. "Legal Advisor" means the officer responsible for providing legal advice to the Hearings Panel. This may be the Monitoring Officer, another legally qualified officer of the Authority, or someone appointed for this purpose from outside the Authority.

2. Rules of Procedure

- 2.1. The Hearings Panel consists of three voting elected Members drawn from the Standards Committee, one of whom shall be elected as Chairman.
- 2.2. The quorum for a meeting of the Hearings Panel is three elected Members.
- 2.3. If the Subject Member is not present at the start of the hearing the Chairman shall ask the Legal Advisor whether the Subject Member has indicated his/her intention not to attend the hearing. The Hearing Panel shall then consider any reasons which the Subject Member

has provided for not attending the hearing and shall decide whether it is satisfied that there is sufficient reason for such failure to attend. If the Hearings Panel is satisfied with such reasons, it shall adjourn the hearing to another date; however if they are not satisfied with such reasons, or if the Subject Member has not given any such reasons, the Hearings Panel shall decide whether to consider the matter and make a determination in the absence of the Subject Member or to adjourn the hearing to another date.

- 2.4. If the Investigating Officer is not present, the Standards Committee shall only conduct a hearing if they are satisfied that there are no substantial points of difference or that any points of difference can be satisfactorily resolved in the absence of the Investigating Officer.
- 2.5. The Hearings Panel may exclude the press and public from the meeting where it appears likely that confidential or exempt information will be disclosed. At the start of the meeting the Chairman shall ask the Subject Member, Investigating Officer and the Legal Adviser whether they wish to make any representations that the Hearings Panel exclude the Press and public from all or any part of the hearing. Full reasons for the request must be given and the other parties will be given the opportunity to respond.

On hearing the arguments of all parties the Standards Committee shall determine whether to exclude the press and public from all or any part of the hearing. Where no resolution to exclude press and public is made the agenda and any documents which have been withheld from the press and public in advance of the meeting shall then be made available.

- 2.6. The Independent Person's views must be sought and taken into consideration before the Hearing Panel takes any decision on whether the Subject Member's conduct constitutes a failure to comply with the Code of Conduct and as to any sanction to be taken following a finding of failure to comply with the Code of Conduct. The Independent Person should normally be present throughout the hearing (but not during the deliberations of the Hearing Panel in private) but in the event that this is not possible, may instead submit their views on the complaint to the Hearing Panel in writing.
- 2.7. All matters/issues before the Hearing Panel will be decided by a simple majority of votes cast, with the Chairman having a second or casting vote.

3. Representation

The Subject Member may be represented or accompanied during the meeting by a solicitor, counsel or, with the permission of the committee, another person.

4. Conduct of the Hearing

- 4.1. Subject to paragraph 4.2 below, the order of business will be as follows:
 - (a) election of Chairman;
 - (b) apologies for absence;
 - (c) declarations of interest

- (d) in the absence of the Subject Member, consideration as to whether to adjourn or to proceed with the hearing (see paragraph 2.3 above);
 - (e) introduction by the Chairman of all persons present;
 - (f) receive representations as to whether the hearing should be held in private and/or whether any documents (or parts thereof) should be withheld from the press and public;
 - (g) determine whether the press and public are to be excluded from any part of the hearing and/or whether any documents (or parts thereof) should be withheld from the press and public;
- 4.2. Chairman may agree to vary this procedure in any particular instance where he/she is of the opinion that, upon taking legal advice, such a variation is necessary in the interests of fairness.
- 4.3. The Hearings Panel may adjourn the hearing at any time.
- 4.4. The Hearings Panel may take legal advice from its Legal Advisor at any time during the hearing or while they are considering the outcome. The substance of any legal advice given to the Hearings Panel should be shared with the Subject Member and the Investigating Officer if they are present.
- 4.5. At the start of the hearing the Chairman will confirm that all present know the procedure which will be followed by the Hearings Panel in determining the matter.
- 4.6. Presentation of the Pre-Hearing Summary Report**
- 4.6.1. The Monitoring Officer, or his representative, will present the pre-hearing summary report highlighting any points of difference in respect of which the Subject Member has stated that he/she disagrees with any finding of fact in the Investigating Officer's report.
- 4.6.2. The Chairman will then ask the Subject Member to confirm that this is an accurate summary of the issues and that he/she maintains the position as set out in the pre-hearing summary report.
- 4.6.3. The Chairman will then give the Subject Member the opportunity to identify any additional points upon which he/she disagrees with any finding of fact in the Investigating Officer's report. In such cases the Subject Member will need to explain, to the satisfaction of the Hearings Panel; why these points were not identified during the pre-hearing process.
- 4.6.4. Where the Subject Members fails to explain, to the satisfaction of the Hearings Panel, reasons for failing to identify each additional point of difference as part of the pre-hearing process, the Hearings Panel may decide to continue with the hearing without allowing the Subject Member to challenge the veracity of those findings of fact which are set out in the Investigating Officer's report but in respect of which they failed to identify a point of difference as part of the prehearing process.
- 4.6.5. If the Hearings Panel is satisfied with the Subject Members reasons the Chairman shall then ask the Investigating Officer (if present) whether he/she is in a position

to deal with those additional points of difference directly or through any witnesses who are in attendance or whose attendance at the hearing can conveniently be arranged. Alternatively, the Hearings Panel may decide to adjourn the hearing to allow the Investigating Officer and/or any additional witnesses to attend the hearing.

4.7. Presentation of the Investigating Officer's Report

- 4.7.1. The Investigating Officer to present their report; including any documentary evidence or other material; having particular regard to any points of difference identified by the Subject Member and explain their reasoning, on the basis of their findings of fact, why they concluded that the Subject Member had failed to comply with the Code of Conduct.
- 4.7.2. Where the Subject Member admits that they failed to comply with the Code of Conduct in the manner described in the Investigating Officer's report, the Hearings Panel may then make a determination that the Councillor has failed to comply with the Code of Conduct in the manner described in the Investigating Officer's report and proceed directly to consider whether any action should be taken (see paragraph 4.16 below).
- 4.7.3. Where no admission is made by the Subject Member the Investigating Officer may call witnesses as necessary to address any points of difference. ***No new points will be permitted.***
- 4.7.4. In the absence of the Investigating Officer, the Hearings Panel shall determine on the advice of the Legal Advisor which witnesses, if any, to call. Where such witnesses are called, the Chairman shall draw the witnesses' attention to any relevant section of the Investigating Officer's report and ask the witness to confirm or correct the report and to provide any relevant evidence.
- 4.7.5. No cross-examination shall be permitted however, at the conclusion of the Investigating Officer's report and/or of the evidence of each witness, the Chairman shall ask the Subject Member if there are any matters upon which the Standards Committee should seek the advice of the Investigating Officer or the witness.
- 4.7.6. The Hearings Panel may question the Investigating Officer upon the content of their report and any witness called.

4.8. Presentation of the Subject Member's case

- 4.8.1. The Chairman shall then invite the Subject Member to respond to the Investigating Officer's report and to call any witnesses as necessary to address any points of difference.
- 4.8.2. No cross-examination shall be permitted but, at the conclusion of the Subject Members evidence and/or of the evidence of each witness, the Chairman shall ask

the Investigating Officer if there are any matters upon which the Hearings Panel should seek the advice of the Councillor or the witness.

4.8.3. The Hearings Panel may question the Subject Member and any witness called.

4.9. Witnesses

The Hearings Panel shall be entitled to refuse to hear evidence from the Investigating Officer, the Councillor or a witness unless they are satisfied that the witness is likely to give evidence which they need to hear in order to be able to determine whether there has been a failure to comply with the Code of Conduct.

4.10. Summing up

The Chairman will invite the Investigating Officer to sum up the complaint followed by the Subject Member who will sum up their case.

4.11. Views/Submissions of the Independent Person

The Chairman will invite the Independent Person to express their view on whether or not they consider that on the facts presented to the Hearing Panel, there has been a breach of the Code of Conduct.

4.12. Additional Evidence

4.12.1. At the conclusion of the evidence, the Chairman shall check with the Members of the Hearings Panel that they are satisfied that they have sufficient evidence to come to a considered conclusion on the matter.

4.12.2. If the Hearings Panel at any stage prior to determining whether there was a failure to comply with the Code of Conduct are of the opinion that they require additional evidence on any point in order to be able to come to a considered conclusion on the matter, they may; on not more than one occasion; adjourn the hearing and make a request to the Investigating Officer to seek and provide such additional evidence and/or to undertake further investigation on any point specified by the Hearings Panel.

4.13. Deliberations of the Hearings Panel

4.13.1. The Hearing Panel will adjourn the hearing and deliberate in private; assisted on matters of law by the legal advisor; to consider whether or not, on the facts found, the Subject Member has failed to comply with the Code of Conduct.

4.13.2. The Hearings Panel shall take its decision on the balance of probability based on the evidence which it has received at the hearing.

4.13.3. The Hearing Panel may at any time come out of private session and reconvene the hearing in public in order to seek additional evidence from the Investigating Officer, the Subject Member or the witnesses. If further information to assist the Panel cannot be presented, then the Panel may adjourn the hearing and issue directions as to the additional evidence required and by whom.

4.13.4. At the conclusion of their consideration, the Hearings Panel shall consider whether it is minded to make any recommendations to the Authority with a view to promoting high standards of conduct among Councillors.

4.14. Announcing the decision

The Hearing Panel will reconvene the hearing in public and the Chairman will announce whether or not on the facts found, the Panel considers that there has been a breach of the Code of Conduct as set out in the Investigating Officers report.

4.15. Determination of No Breach of the Code of Conduct

4.15.1. Where the Hearings Panel determines that the Councillor has not failed to follow the Code of Conduct in the manner set out in the Investigating Officer's report the Chairman will set out any recommendations which the Hearings Panel is minded to make to the Authority with a view to promoting high standards of conduct among Councillors and seek the views of the Subject Member, the Investigating Officer and the Legal Advisor before the Hearings Panel finalises any such recommendations.

4.15.2. The Chairman will then ask the Subject Member whether they have any objection to publication by the authority o a statement of its finding.

4.16. Determination that there was a Breach of the Code of Conduct

4.16.1. Where the Hearings Panel determines that the Subject Member has failed to follow the Code of Conduct in the manner set out in the Investigating Officer's report the Chairman will invite the Independent Person, the Investigating Officer (or in their absence, the Legal Advisor) and the Subject Member to make their representations as to whether or not any sanctions should be applied and, if so, what form they should take. Possible sanctions include:

- (a) Reporting its findings to Council [*or to the Parish Council*] for information;
- (b) Recommending to the Subject Member's Group Leader (or in the case of ungrouped Members, recommend to Council or to Committees) that they be removed from any or all Committees or Sub-Committees of the Council;s
- (c) Recommending to the Leader of the Council that the Subject Member be removed from the Cabinet, or removed from particular Portfolio responsibilities;
- (d) Instructing the Monitoring Officer to [*or recommend that the Parish Council*] arrange training for the Subject Member;

- (e) Removing the Subject Member *[or recommend to the Parish Council that the Member be removed]* from all outside appointments to which they has been appointed or nominated by the authority *[or by the Parish Council]*;
- (f) Withdrawing *[or recommend to the Parish Council that it withdraws]* facilities provided to the Subject Member by the Council, such as a computer, website and/or email and Internet access; or
- (g) Excluding *[or recommend that the Parish Council exclude]* the Subject Member from the Council's offices or other premises, with the exception of meeting rooms as necessary for attending Council, Committee and Sub-Committee meetings.

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

- (a) What was the Subject Member's intention and did they know that they were failing to follow the District or Parish Council's Code of Conduct?
- (b) Did the Subject Member receive advice from officers before the incident and was that advice acted on in good faith?
- (c) Has there been a breach of trust?
- (d) Has there been financial impropriety, e.g. improper expense claims or procedural irregularities?
- (e) What was the result/impact of failing to follow the District or Parish Council's Code of Conduct?
- (f) How serious was the incident?
- (g) Does the Subject Member accept that they were at fault?
- (h) Did the Subject Member apologise to the relevant persons?
- (i) Has the Subject Member previously been reprimanded or warned for similar misconduct?
- (j) Has the Subject Member previously breached of the District or Parish] Council's Code of Conduct?
- (k) Is there likely to be a repetition of the incident?

4.16.3. Having heard the representations the Chairman will ensure that each Member of the Hearings Panel is satisfied that they have sufficient information to enable them to take an informed decision as to whether to impose a sanction and (if appropriate) as to the form of the sanction.

4.16.4. The Chairman should then set out any recommendations which the Standards Committee is minded to make to the Authority with a view to promoting high standards of conduct among Councillors and seek the views of the Independent Person, the Investigating Officer (or in their absence, the Legal Advisor) and the Subject Member.

4.16.5. The Hearing Panel will adjourn and deliberate in private to consider whether to impose a sanction, and where appropriate what sanction to impose and when that sanction should take effect. In addition the they will consider any recommendations to be made to the Authority.

4.16.6. At the completion of their consideration, the Hearings Panel will reconvene the hearing in public and the Chairman will announce the Hearings Panel's decision as to whether a sanction is to be imposed the nature of such a sanction, and when it should take effect, together with the principal reasons for those decisions. They will then give details of any recommendations to be made to the authority.

4.17. The close of the hearing

The Hearings Panel will announce its decision on the day of the hearing and provide the Legal Advisor with a short written statement of their decision, which the Legal Advisor will use as the basis of the formal decision notice. The Chairman will then formally close the meeting.

5. Publication and notification of the decision and recommendations

- 5.1. Following the close of the hearing, the Legal Advisor will agree with the Chairman of the Hearings Panel a formal written decision notice of the Hearings Panel's determination.
- 5.2. Within 20 working days of the hearing, the Monitoring Officer will provide a copy of the full written decision and the reasons for that decision, including any recommendations, to:
 - (a) the Subject Member;
 - (b) the Complainant;
 - (c) in the case of a Parish Council Member; the Clerk to that Members Parish Council.
- 5.3. Within 20 working days of the Hearing Panel's announcement of its decision and recommendations, the Monitoring Officer will publish a summary of the Hearing Panel's decision and recommendations and reasons for the decision and recommendations on the Council's website.

