

Complaints Received Under the Members' Code of Conduct

Final Decision-Maker	Audit, Governance & Standards Committee
Lead Head of Service	Claudette Valmond – Interim Head of Legal Partnership
Lead Officer and Report Author	Gary Rowland – Senior Legal Adviser, Corporate Governance
Classification	Public
Wards affected	All

Executive Summary

The report provides an update to the Committee on complaints under the Members' Code of Conduct previously reported as under consideration and received in the period 1 March to 31 August 2022.

This report makes the following recommendations to this Committee:

1. That the contents of the report be noted.

Timetable

Meeting	Date
Audit, Governance & Standards Committee	27 September 2022

Complaints Received Under the Members' Code of Conduct

1. CROSS-CUTTING ISSUES AND IMPLICATIONS

Issue	Implications	Sign-off
Impact on Corporate Priorities	High standards of conduct are essential amongst Members in delivering the Council's priorities. The Code of Conduct complaints procedure supports this.	Senior Legal Adviser – Corporate Governance
Cross Cutting Objectives	No impact.	Senior Legal Adviser – Corporate Governance
Risk Management	The report is presented for information only and has no risk management implications. An effective and robust Code of Conduct complaints procedure minimises the risk of Member misconduct and is part of an effective system of governance.	Senior Legal Adviser – Corporate Governance
Financial	There are no direct financial implications; however, should it be necessary to appoint external Independent Investigators, the cost of this will be met by the Borough Council.	Senior Legal Adviser – Corporate Governance
Staffing	The complaints procedure is dealt within the remit of the Monitoring Officer with input from the Legal team as required.	Senior Legal Adviser – Corporate Governance
Legal	The requirements of the Localism Act 2011 with regards to the Code of Conduct complaints procedure are set out within the report. The reporting process ensures that the Committee continues its oversight of the Code of Conduct as required by the Constitution.	Senior Legal Adviser – Corporate Governance
Privacy and Data Protection	No personal information is provided as part of the report.	Senior Legal Adviser – Corporate Governance
Equalities	Any potential to disadvantage or discrimination against different groups within the community should be overcome within the adopted complaints procedure.	Senior Legal Adviser – Corporate Governance
Public Health	None identified in the report.	Senior Legal Adviser – Corporate Governance

Crime and Disorder	None identified in the report.	Senior Legal Adviser – Corporate Governance
Procurement	None identified in the report.	Senior Legal Adviser – Corporate Governance
Biodiversity and Climate Change	None identified in the report.	Senior Legal Adviser – Corporate Governance

2. INTRODUCTION AND BACKGROUND

- 2.1 It is a requirement under the Localism Act 2011 that all Councils adopt a Code of Conduct and that the Code adopted must be based upon the Nolan Principles of Conduct in Public Life. The current Members’ Code of Conduct (“the Code”) for Maidstone Borough Council is set out in the Constitution.
- 2.2 The Localism Act 2011 requirement to adopt a Code of Conduct also applied to all Parish Councils. Most Parish Councils in the Maidstone area have adopted a similar Code of Conduct to the Borough Council, based on a Kent wide model. A few Parish Councils have adopted their own particular Code.
- 2.3 Under the Localism Act 2011 Maidstone Borough Council is responsible for dealing with any complaints made under the various Codes of Conduct throughout the Maidstone area.
- 2.4 The Constitution stipulates that oversight of Code of Conduct complaints is part of the remit of the Audit, Governance and Standards Committee.
- 2.5 As part of the Committee’s oversight function it is agreed that the Monitoring Officer will provide reports on complaints to the Audit, Governance & Standards Committee. It should be noted that the Localism Act 2011 repealed the requirement to publish decision notices; therefore, in providing the update to the Committee the names of the complainant and the Councillor complained about are both kept confidential in accordance with the Data Protection Act 2018. Whilst personal data is kept confidential, the report now highlights why those complaints that were rejected, did not establish a breach of the Code as requested during the meeting in September 2021.

- 2.6 At the previous Committee on 14 March 2022, it was reported that 5 Parish/Town Councillor complaints were being considered. These have now been concluded as follows:

Complaint 1 - Allegation

- you must not prevent another person from gaining access to information to which that person is entitled by law.

No breach was established. Complaint met the following Local Assessment Criteria:

1.4(f) – the complaint is relatively minor and dealing with the complaint would have a disproportionate effect on both public money and officers’ and Members’ time; and

1.4(i) – the complaint is such that it is unlikely that an investigation will be able to come to a firm conclusion on the matter, e.g., where there is no firm evidence on the matter.

Complaint 2 - Allegations

- you must behave in such a way that a reasonable person would regard as respectful; and
- you must not bully or harass any person.

A breach was established, and the Monitoring Officer concluded that the complaint should be resolved by way of informal resolution. The following actions were recommended:

- 1. In respect of comments made by the subject member, a formal apology should be made in writing;*
- 2. The Clerk should arrange suitable training for the subject member regarding parish procedures and*
- 3. Consideration should be given as to whether mediation between the parties would be appropriate.*

Complaint 3 - Allegations

- you must behave in such a way that a reasonable person would regard as respectful;
- you must use the resources of the Council in accordance with its requirements;
- you must not do anything that compromises, or is likely to compromise, the impartiality or integrity of those who work for, or on behalf of the Council; and
- you must not conduct yourself in a manner which could reasonably be regarded as bringing your position or the Council into disrepute.

A breach was established and the Monitoring Officer concluded that the complaint should be resolved by way of informal resolution. The following actions were recommended:

- 1. The Parish Council should work with appropriate organisations such as KALC with an aim to resolve differences and improve relationships within the Council, which may involve mediation;*
- 2. The Parish Council should review its policies, procedures and wider governance to ensure that it is working effectively; and*
- 3. The Parish Council should arrange for training to be carried out for the Council as a whole, which may include roles and responsibilities, the Code of Conduct, working as a team and strategy development.*

Complaint 4 - Allegations

- you must not bully any person;
- you must not do anything that compromises, or is likely to compromise, the impartiality or integrity of those who work for, or on behalf of, the Authority;
- you must not conduct yourself in a manner which could reasonably be regarded as bringing your office or the Authority into disrepute; and
- you must not use or attempt to use your position as a Councillor improperly to confer on or secure for yourself or any other person, an advantage or disadvantage.

No breach was established. Complaint met the following Local Assessment Criteria:

1.4(d) – the complaint is malicious, trivial, politically motivated or ‘tit-for tat’; and

1.4(f) – the complaint is relatively minor and dealing with the complaint would have a disproportionate effect on both public money and officers’ and Members’ time.

Complaint 5 - Allegation

- you must not bully any person.

A breach was established and the Monitoring Officer concluded that the complaint should be resolved by way of informal resolution. The following actions were recommended:

- 1. That the subject member considers his behaviour, tone and manner when corresponding with the Parish Council and when in meetings.*
- 2. To take part in any mediation or conciliation proposals put forward by the Parish Council.*
- 3. The Parish Council should consider revisiting their policies to ensure they are fit for purpose.*

Since the last report, 4 new complaints have been received against parish/town councillors. These complaints have been considered by the Monitoring Officer and have been concluded as follows:

Complaint 1 – Allegations

- you must not bully any person;
- you must not intimidate or attempt to intimidate any person who is or is likely to be a complainant, a witness, or involved in the administration of any investigation or proceedings, in relation to an allegation that a Member (including yourself) has failed to comply with this Code;
- you must not do anything that compromises, or is likely to compromise, the impartiality or integrity of those who work for, or on behalf of, the Authority;
- you must not conduct yourself in a manner which could reasonably be regarded as bringing your office or the Authority into disrepute; and
- you 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.

A breach was established and the Monitoring Officer concluded that the complaint should be resolved by way of informal resolution. The following actions were recommended:

- 1. The Parish Council should work with appropriate organisations such as the Kent Association of Local Councils to resolve differences and improve relationships within the Council as a whole. This may include a process of formal mediation between identified individuals as well as more informal work with the whole Council;*
- 2. The Parish Council should review its policies, procedures and wider governance to ensure that it is working effectively and underlying issues are being addressed; and*
- 3. The Parish Council arrange for training to be carried out in respect of roles and responsibilities, the Code of Conduct, working as a team and strategy development.*

Complaint 2 – Allegations

- you must not bully any person;
- you must not intimidate or attempt to intimidate any person who is or is likely to be a complainant, a witness, or involved in the administration of any investigation or proceedings, in relation to an allegation that a Member (including yourself) has failed to comply with this Code; and
- you must not conduct yourself in a manner which could reasonably be regarded as bringing your office or the Authority into disrepute.

No breach was established. The complaint met the following Local Assessment Criteria:

1.4(f) – the complaint is relatively minor and dealing with the complaint would have a disproportionate effect on both public money and officers’ and Members’ time; and

1.4(i) - the complaint is such that it is unlikely that an investigation will be able to come to a firm conclusion on the matter, e.g., where there is no firm evidence on the matter.

Complaint 3 – Allegations

- you must not bully any person;
- you must not intimidate any person who is likely to be a complainant, a witness, or involved in the administration of any investigation or proceedings, in relation to an allegation that a Member (including yourself) has failed to comply with this Code; and
- you must not conduct yourself in a manner which could reasonably be regarded as bringing your office or the Authority into disrepute.

The complainant subsequently withdrew their complaint and as such, no further action was taken.

Complaint 4 – Allegation

- you must not bully any person.

No breach was established. The complaint met the following Local Assessment Criteria:

1.4(k) - the complaint is about a person who is no longer a Borough or Parish Councillor or Co-opted Member.

- 2.7 At the time of writing this report, there are currently no outstanding complaints.
-

3. AVAILABLE OPTIONS

- 3.1 The Committee could decide that they no longer wish to receive the updates on complaints under the Code of Conduct. This is not recommended as it is part of the Committee’s general oversight function.
- 3.2 That the Committee note the update on complaints received under the Members’ Code of Conduct.
-

4. PREFERRED OPTION AND REASONS FOR RECOMMENDATIONS

- 4.1 Option 3.2 that the Committee note the update on complaints received under the Members’ Code of Conduct is recommended as it is important that the Committee continue to oversee the complaints received.
-

5. RISK

5.1 This report is presented for information only and has no risk management implications.

6. CONSULTATION RESULTS AND PREVIOUS COMMITTEE FEEDBACK

6.1 Members of the Audit, Governance & Standards Committee and the Independent Person will be consulted on individual complaints, as and when necessary, in accordance with the relevant complaints' procedure.

7. NEXT STEPS: COMMUNICATION AND IMPLEMENTATION OF THE DECISION

7.1 As the report is for information only, no further action will be taken.

8. REPORT APPENDICES

None.

9. BACKGROUND PAPERS

None.