

AUDIT, GOVERNANCE AND STANDARDS COMMITTEE**15 January 2024****Revised Member's Code of Conduct and Arrangements for dealing with councillor conduct complaints**

Timetable	
Meeting	Date
Audit, Governance and Standards Committee	15 January 2024
Democracy and General Purposes Committee	31 January 2024
Council	21 February 2024

Will this be a Key Decision?	No
Urgency	Not Applicable
Final Decision-Maker	AUDIT, GOVERNANCE AND STANDARDS COMMITTEE
Lead Head of Service	Russell Fitzpatrick, Monitoring Officer
Lead Officer and Report Author	Russell Fitzpatrick, Monitoring Officer
Classification	Public
Wards affected	All

Executive Summary

This report provides an update on a review of Local Government Ethical Standards and in accordance with that review proposes various changes to Maidstone Borough Council's Member's Code of Conduct and arrangements for dealing with Councillor conduct complaints, which form part of the Council's Constitution.

Purpose of Report

Recommendation to Council

This report makes the following recommendation to the Committee:

THAT

1. The proposed update to the Member Code of Conduct at Appendix 3, be noted.
 2. The proposed update to the arrangements for dealing with councillor conduct complaints at Appendix 4, be noted.
 3. The Democracy & General Purposes Committee recommend to Council that the Constitution be updated to include the Member Code of Conduct at Appendix 3, and the arrangements for dealing with councillor conduct complaints at Appendix 4.
 4. The Council be recommended to adopt the Member Code of Conduct at Appendix 3, and the arrangements for dealing with councillor conduct complaints at Appendix 4.
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Revised Member's Code of Conduct and Arrangements for dealing with councillor conduct complaints

1. CROSS-CUTTING ISSUES AND IMPLICATIONS

Issue	Implications	Sign-off
Impact on Corporate Priorities	<p>The four Strategic Plan objectives are:</p> <ul style="list-style-type: none"> • Embracing Growth and Enabling Infrastructure • Safe, Clean and Green • Homes and Communities • A Thriving Place <p>We do not expect the recommendations will by themselves materially affect achievement of corporate priorities.</p>	Monitoring Officer
Cross Cutting Objectives	<p>The four cross-cutting objectives are:</p> <ul style="list-style-type: none"> • Heritage is Respected • Health Inequalities are Addressed and Reduced • Deprivation and Social Mobility is Improved • Biodiversity and Environmental Sustainability is respected <p>We do not expect the recommendations will by themselves materially affect achievement of the cross-cutting objectives</p>	Monitoring Officer
Risk Management	<p>The risks associated with this proposal, including the risks if the Council does not act as recommended, have been considered in line with the Council's Risk Management Framework. We are satisfied that the risks associated are within the Council's risk appetite and will be managed accordingly.</p>	Monitoring Officer
Financial	No implications identified.	Monitoring Officer
Staffing	We will deliver the recommendations with our current staffing.	Monitoring Officer
Legal	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	Monitoring Officer

	Public Life. The extant Members' Code of Conduct adopted 2012 can be found within Part D (Codes) of the Council's Constitution. Pursuant to s. 28(5) of the Localism Act 2011 the Council may revise its existing code of conduct adopt a code of conduct to replace its existing code of conduct.	
Information Governance	The recommendations will impact personal information (as defined in UK GDPR and Data Protection Act 2018) the Council processes. The Information Governance Team have reviewed the processing of personal data affected and the associated documentation has been updated accordingly.	Information Governance Team
Equalities	The recommendations do not propose a change in service therefore will not require an equalities impact assessment.	Monitoring Officer
Public Health	No implications identified.	Monitoring Officer
Crime and Disorder	There are no implications to Crime and Disorder	Monitoring Officer
Procurement	No implications identified.	Monitoring Officer
Biodiversity and Climate Change	There are no implications on biodiversity and climate change.	Monitoring Officer

2. INTRODUCTION AND BACKGROUND

- 3.1 Pursuant to section 27 of the Localism Act 2011, all Councils are under a statutory duty to promote and maintain high standards of conduct by members and co-opted members of the authority. In discharging this duty, the Council *"must, in particular, adopt a code dealing with the conduct that is expected of members and co-opted members of the authority when they are acting in that capacity"*. The council's Code of Conduct, when viewed as a whole, must be consistent with the seven principles of public life of selflessness, integrity, objectivity, accountability, openness, honesty, and leadership (known as "the Nolan Principles"). In addition, the Code must include provision for the registration and disclosure of pecuniary interests and other relevant interests. There is no mandatory Code of Conduct.
- 3.2 Maidstone Borough Council (**the Council**) adopted its current Code of Conduct on 5 July 2012 (**the extant Maidstone Code of Conduct**). The extant Maidstone Code of Conduct is contained within the Maidstone Borough Council's Constitution at Part D1 (Members' Code of Conduct) with the arrangements for dealing with Councillor conduct complaints being contained

in Part D2 (Code Complaints) and associated Appendices. This code of conduct is based on the Kent County Council Code, a practice which is considered good practice to promote consistency for the authorities.

- 3.3 On 30 January 2019, the Committee on Standards in Public Life (**CSPL**) produced a report on Local Government Ethical Standards. The report found that there was considerable variation in the length, quality, and clarity in local authority Codes of Conduct. A link to the full report has been provided in the Background Papers (**CSPL January 2019 Report**). A summary of the highlights of the Report and the Government's response is attached as Appendix 1. It is important to note that notwithstanding the issues raised by the CSPL, the only recommendation from CSPL effectively taken forward by the government was the model Code of Conduct recommendation.
- 3.4 To this end, the CSPL recommended that the Local Government Association (**LGA**) should create an updated model code of conduct, in consultation with representative bodies of councillors and officers of all tiers of local government. At its meeting on 29 July 2020, this Committee noted a report on the Consultation on the LGA Draft Model Code of Conduct Code. In December 2020, the LGA issued the "Local Government Association Model Councillor Code of Conduct 2020". This was updated on 19 January and 17 May 2021. A link to the Model Code is provided below and is also attached at Appendix 2:

<https://www.local.gov.uk/publications/local-government-association-model-councillor-code-conduct-2020>

The LGA subsequently published "Guidance on the Local Government Association Model Councillor Code of Conduct" in July 2021. The LGA also published a "Guidance on Member Model Code of Conduct Complaints Handling" in September 2021. Links to these guidance documents are provided in the Background Papers.

- 3.5 The Government's response to the CSPL January 2019 Report was finally published in March 2022. A summary of the Government's response is included in Appendix 1. The full response can be accessed via the link contained in the Background Papers.
- 3.6 The Kent Secretaries Group, a forum for Heads of Legal Services and Monitoring Officers across Kent, set up an officer's working group to review all the reports and guidance documents referred to above. MKLS was represented on that group. This resulted in the production of a recommended Kent Member's Code of Conduct and arrangements for dealing with councillor conduct complaints (**the Kent Code**). This has the advantage in seeking to ensure (so far as possible) a consistent approach to Code of Conduct complaints across Kent. This also assists dual hatted members to ensure that they can work within the same/similar Code of Conduct framework and assist Monitoring Officers and Independent Persons to try, so far as possible, to adopt a consistent approach to dealing with Code of Conduct complaints. As various Heads of Legal and Monitoring Officers across the County had input into the Kent Code, any issues arising for one authority can be raised within the Kent Secretaries group and solutions sought to amend the code to ensure (so far as possible) consistency and lead to further improvements. Ultimately

it is for each authority to adopt their own Code of Conduct and arrangements for dealing with complaints.

3.7 That said, the Kent Secretaries group adopted the majority of the LGA's Model Code of Conduct save for the following provisions:

3.7.1 some of the introductory and explanatory paragraphs as these were considered to be verbose, and

3.7.2 the civility/respect provisions. This was included in a previous Model Code but later removed due to concerns that the definition of "disrespectful" was subjective and resulted at the time in an increase in the number of petty complaints. There was concern expressed that this would be repeated, and the Kent Secretaries group considered it would suffice for this aspect to be covered by the existing sections of the Code relating to bullying and harassment and bringing the Council into disrepute.

This approach has been approved by Kent County Council's Standards Committee.

3.8 The proposed changes to the Maidstone Code of Conduct and arrangements for dealing with code of conduct complaints have been informed by the work of the Kent Secretaries Group. The amendments proposed by the Kent Model Code of Conduct and arrangements have been incorporated as track changes to the extant Maidstone Code of Conduct at Appendix 3 (Code of Conduct) and Appendix 4 (Arrangements for dealing with councillor conduct complaints).

3.9 With specific reference to the Code of Conduct, save for formatting issues (which are not shown as track changes), by way of summary, the proposed principal changes to the extant Maidstone Code of Conduct are:

3.9.1 Part D1. Paragraph 1, sub-paragraph 1.1 "Associated Person" - The words "or body" have been added, these were not included in the code but have been incorporated in other codes and therefore to ensure consistency this has been suggested as being incorporated into the code by Kent Secretaries Group.

3.9.2 Part D1. Paragraph 2, sub-paragraph 2.1- Additional wording has been included to reference social media. The LGA Model Code recommended including a long list of different types of communication and interaction. The form of words suggested here is simpler and reduces the risk of an unintended gap due to the list missing something. The current Code was adopted prior to the rapid growth in social media and this section recognises this.

3.9.3 Part D1. Paragraph 3, sub-paragraph 3.2.1 - This has been expanded to include reference to "harassment" and provide definitions as to what constitutes "bullying" and "harassment".

3.9.4 Part D1. Paragraph 3, sub-paragraph 3.2.5 - This section provides a direct cross-reference between the sections in the Constitution

referring to information that is classified as exempt in Committee papers.

- 3.9.5 Part D1. Paragraph 3, sub-paragraph 3.3 – A new section has been suggested to include training. The LGA Model Code recommended including a requirement to undertake Code of Conduct training. Rather than mandate it, the approach taken here is to establish the principle that not undertaking training cannot be used as an excuse for breaching the Code.
 - 3.9.6 Part D1. Paragraph 3, sub-paragraph 3.4 – A new section has been added to promote cooperation by members subject to a Code of Conduct complaint. The LGA Model Code recommended including a requirement to cooperate with any investigation and/or subsequent determination.
- 3.10 The arrangements for dealing with councillor conduct complaints contained at Appendix 4 is procedural in nature and reflects cumulative Monitoring Officer/Head of Legal Services experience.
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3. AVAILABLE OPTIONS

3.1 The Committee has the following options available:

- 3.1.1 **Option 1:** To recommend to Council that the proposed amendments to the Member's Code of Conduct (at Appendix 3) and arrangements for dealing with councillor conduct complaints (at Appendix 4) be adopted and the Constitution updated accordingly. This option is recommended on the basis that members are familiar with this layout of the code, the changes to be considered are not extensive and this is consistent with the position of the principal authority. This is also the preferred option so as to provide consistency with other Kent authorities.
- 3.1.2 **Option 2:** To recommend to Council that alternative proposed amendments to the Member's Code of Conduct and arrangements for dealing with councillor conduct complaints be adopted and the Constitution updated accordingly. The Localism Act 2011 provides local authorities with the freedom to create their own Code of Conduct and arrangements for dealing with councillor conduct complaints, so it is open to the Audit, Governance and Standards Committee to make alternative proposed amendments having considered the various reports, government responses and LGA guidance. This is not a recommended course of action as the Council could inadvertently create a "third" Code of Conduct in circumstances where various options have already been considered and assessed extensively by both the LGA and separately by the Kent Secretaries group.
- 3.1.3 **Option 3:** To recommend to Council to adopt the LGA Model Code of Conduct (at Appendix 2). This option is not recommended as the Monitoring Officer on review of the existing code considers that the majority of the points set out in the LGA Model Code are captured in the Kent Code. The LGA will continuously review the model code and the Monitoring Officer (and Kent Secretaries group) will in turn continuously review the changes and

update members to determine whether further changes need to be made to the local code. The majority of the LGA Model Code has been incorporated within a code that Councillors are au fait with.

- 3.1.4 **Option 4:** Do nothing and make no changes to the existing Maidstone Code of Conduct so the Member's Code of Conduct and arrangements for dealing with Councillor conduct complaints remain as they are currently. This option would run counter to the recommendations of the Committee in Standards in Public Life whose intention was to strengthen the position regarding ethical standards.
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4. PREFERRED OPTION AND REASONS FOR RECOMMENDATIONS

- 4.1 Option 1 is the recommended option as this would reflect most of the LGA's proposals and the CSPL's best practice recommendations for local authorities and also reflects the recommendations of the Kent Secretaries group. Furthermore, Members are familiar with this layout of the code, the changes to be considered are not extensive and this is consistent with the position of the principal authority.
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5. RISK

- 5.1 The risks associated with this proposal, including the risks if the Council does not act as recommended, have been considered in line with the Council's Risk Management Framework. We are satisfied that the risks associated are within the Council's risk appetite and will be managed accordingly.
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6. CONSULTATION RESULTS AND PREVIOUS COMMITTEE FEEDBACK

- 6.1 The consultation on the LGA Model Code of Conduct was presented to and noted by Audit, Governance and Standards Committee on 29 July 2020 where the contents of the then LGA Model Code of Conduct were noted.
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7. NEXT STEPS: COMMUNICATION AND IMPLEMENTATION OF THE DECISION

- 7.1 The recommendations of the Audit, Governance and Standards Committee will be put to Full Council. The Democracy & General Purposes Committee will be consulted on Appendices 3 and 4 prior to Full Council's consideration given the constitutional changes that would be required to give effect to this Committee's recommendation.
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8. REPORT APPENDICES

The following documents are to be published with this report and form part of the report:

- Appendix 1: Summary of Highlights of CSPL Report & Government Response
 - Appendix 2: LGA Model Councillor Code of Conduct (December 2020 as updated on 19 January and 17 May 2021)
 - Appendix 3: Proposed updated Maidstone Borough Council Member's Code of Conduct
 - Appendix 4: Proposed updated Maidstone Arrangements for dealing with councillor conduct complaints
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9. BACKGROUND PAPERS

- 9.1 [Committee on Standards in Public Life - Local Government Ethical Standards - A Review by the Committee on Standards in Public Life \(30 January 2019\)](#)
- 9.2 [Guidance on LGA Model Councillor Code of Conduct \(July 2021\)](#)
- 9.3 [Guidance on Member Model Code of Conduct Complaints Handling \(September 2021\)](#)
- 9.4 [Local government ethical standards: government response to the Committee on Standards in Public Life report \(March 2022\)](#)