

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 September 2021 to 28 February 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	14 March 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	The recommendations do not propose a change in service therefore will not require an equalities impact assessment	Equalities & Communities Officer
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 Since the last report to this Committee on 28 September 2021, 4 existing Borough Councillor complaints have been concluded as follows:
- Allegation – 3(2)(a) you must not conduct yourself in a manner which could reasonably be regarded as bringing your office or authority into disrepute.

No breach was established. Complaint met part (e) of the Legal Jurisdiction Test – ‘if the facts could be established as a matter of evidence, could the alleged conduct be capable of a breach of the Code of Conduct?’

The Subject Member’s comments during a robust debate were not considered to be inappropriate.

- Allegations - 3(2)(a) you must not bully any person and 3(2)(f) 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. Complaint met part (e) of the Legal Jurisdiction Test – ‘if the facts could be established as a matter of evidence, could the alleged conduct be capable of a breach of the Code of Conduct?’ The complaint also met part (f) of the Local Assessment Criteria – ‘the complaint is relatively minor and dealing with the complaint would have a disproportionate effect on both public money and officers’ and Members’ time.’

The alleged behaviour of the Subject Member did not correspond with the recording of the Council meeting.

- Allegation - 3(2)(f) 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. Complaint met part (e) of the Legal Jurisdiction Test – ‘if the facts could be established as a matter of evidence, could the alleged conduct be capable of a breach of the Code of Conduct?’

Comments made by the Subject Member were not considered to be offensive or personal. General advice was given around considering the perception of comments made in future.

- Allegations - 3(2)(a) – you must not bully any person, 3(2)(c) – 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, 3(2)(f) – you must not conduct yourself in a manner which could reasonably be regarded as bringing your office or the Authority into disrepute and 3(2)(g) – 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 part (c) of the Legal Jurisdiction Test – ‘was the person complained of acting in an official capacity at the time of the alleged conduct?’

No evidence was provided that showed the Subject Member was acting in an official capacity.

Since the last report, 5 new complaints have been received against parish councillors. These complaints are currently being considered by the Interim Monitoring Officer and will be reported on in the next report.

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.