

Report from the Audit, Governance and Standards Committee and Democracy and General Purposes Committee – Revised Members’ Code of Conduct and Arrangements for Dealing with Councillor Conduct Complaints

Timetable	
Meeting	Date
Audit, Governance and Standards Committee	11 April 2024
Democracy and General Purposes Committee	19 June 2024
Council	17 July 2024

Wards affected	All
-----------------------	-----

Executive Summary

This report asks the Council to adopt the revised Member Code of Conduct and revised arrangements for dealing with Councillor conduct complaints to replace the existing Code and arrangements.

On 19 June 2024 the Democracy and General Purposes Committee assessed the changes to the Constitution required to give effect to the revised Code and arrangements, and recommended to Council that the existing documents be replaced with the new ones.

Members are familiar with the layout of the extant Maidstone Code of Conduct and the changes proposed are not extensive and provide consistency with other Kent authorities.

This report makes the following recommendations:

The Audit Governance and Standards Committee recommends:

1. That the Council agree the revised Member Code of Conduct (Appendix 1) and revised arrangements for dealing with Councillor conduct complaints (Appendix 2)

The Democracy and General Purposes Committee recommends:

2. That the Council agree the changes to the Constitution to give effect to the introduction of the revised Member Code of Conduct and revised arrangements for dealing with Councillor conduct complaints.

Report from the Audit, Governance and Standards Committee and Democracy and General Purposes Committee – Revised Members’ Code of Conduct and Arrangements for Dealing with Councillor Conduct Complaints

1. REASONS FOR RECOMMENDATION

- 1.1 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.
- 1.2 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 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, which is considered good practice to promote consistency for the authorities.
- 1.3 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). It is important to note that notwithstanding the issues raised by the CSPL, the only recommendation from the CSPL effectively taken forward by the government was the Model Code of Conduct recommendation.
- 1.4 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. 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:

<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.

- 1.5 The Government’s response to the CSPL January 2019 Report was finally published in March 2022 and can be accessed via the link contained in the Background Papers.
- 1.6 The Kent Secretaries’ Group, a forum for Heads of Legal Services and Monitoring Officers across Kent, set up an Officers’ 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 Members’ 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 its own Code of Conduct and arrangements for dealing with complaints.
- 1.7 That said, the Kent Secretaries’ group adopted the majority of the LGA’s Model Code of Conduct save for the following provisions:
 - 1.7.1 some of the introductory and explanatory paragraphs as these were considered to be verbose; and
 - 1.7.2 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.

- 1.8 The proposed changes to the extant 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 to the Kent Model Code of Conduct and arrangements have been incorporated into the extant Maidstone Code of Conduct at Appendix 1 (Code of Conduct) and Appendix 2 (Arrangements for Dealing with Councillor conduct complaints).

- 1.9 With specific reference to the Code of Conduct, save for formatting issues, by way of summary, the proposed principal changes to the extant Maidstone Code of Conduct are:
- 1.9.1 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.
 - 1.9.2 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.
 - 1.9.3 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".
 - 1.9.4 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.
 - 1.9.5 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.
 - 1.9.6 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.
- 1.10 In January 2024, at the request of the Audit, Governance and Standards Committee, the Kent Association of Local Councils (KALC) was consulted on the proposed amendments to the extant Maidstone Code of Conduct. Suggestions provided by KALC have been considered by the Monitoring Officer. Stylistic amendments aimed at enhancing clarity or addressing specific concerns have been accepted and incorporated into the document at Appendix 1. Amendments tailored to Parish Councils, which do not directly pertain to the regulation of Maidstone Borough Council Members, have not been universally adopted but remain open for consideration by the respective Parish Councils. Amendments which do not align with the existing legal framework have not been accepted.

- 1.11 An urgent update to the meeting of the Audit, Governance and Standards Committee held on 11 April 2024 replaced the definition of Co-opted Member to align with the definition in Section 27 (4) of the Localism Act 2011 and re-instated reference to “plus one non-voting Parish Councillor when a Parish Councillor is the subject of a complaint” at paragraphs 2.1 and 2.2 of the Hearing Panel Rules of Procedure.
- 1.12 The arrangements for dealing with Councillor conduct complaints contained at Appendix 2 are procedural in nature and reflect cumulative Monitoring Officer/Head of Legal Services experience.
- 1.13 The Audit, Governance and Standards Committee, at its meeting held on 11 April 2024, agreed to recommend to the Democracy and General Purposes Committee that the Constitution be updated to give effect to the introduction of a revised Member Code of Conduct (Appendix 1) and revised arrangements for dealing with Councillor conduct complaints (Appendix 2). During the discussion, it was suggested by the Parish Council representatives that no changes be made to the extant Maidstone Code of Conduct at the present time to enable further work to take place to achieve a model which can be adopted by all Parish Councils without change. However, the Committee agreed to proceed as recommended, with the Chairman’s casting vote in favour. The Parish Council representatives wished to emphasise that they did not have a vote on this matter.
-

2. **ALTERNATIVES CONSIDERED AND WHY NOT RECOMMENDED**

- 2.1. **Alternative 1:** To recommend to Council that the Constitution be updated to reflect the amendments proposed by KALC. Stylistic amendments aside, this option is not recommended as some of the amendments are Parish Council specific and this would create interpretational issues for breaches of the Code of Conduct by Maidstone Borough Council Members and would not align with the regulatory framework.
- 2.2 **Alternative 2:** To recommend to Council that the Constitution be updated to reflect alternative proposed amendments to the Members’ Code of Conduct and arrangements for dealing with Councillor conduct complaints. 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.
- 2.3 **Alternative 3:** To recommend to Council that the Constitution be updated to reflect the LGA Model Code of Conduct. 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 familiar with.

- 2.4 **Alternative 4:** To recommend to Council that no changes be made to the Constitution so the existing Members' 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 CSPL whose intention was to strengthen the position regarding ethical standards.
-

2. APPENDICES

- 2.1 Appendix 1 – Proposed Updated Maidstone Borough Council Members' Code of Conduct

Appendix 2 - Revised Arrangements for Dealing with Councillor Conduct Complaints.

Appendix 3 - Member Code of Conduct Complaint Form

3. BACKGROUND PAPERS

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