

# Arrangements for dealing with code of conduct complaints under the Localism Act 2011

## 1 Context

These Arrangements set out how you may make a complaint that an elected or co-opted member of Maidstone Borough Council *or of a parish council within its area* has failed to comply with the authority's Code of Conduct, and sets out how Maidstone Borough Council will deal with allegations of a failure to comply with the authority's Code of Conduct.

Under Section 28(6) and (7) of the Localism Act 2011, the Council must have in place "arrangements" under which allegations that a member or co-opted member of the authority *or of a parish council within the authority's area*, or of a Committee or Sub-Committee of the authority, has failed to comply with that authority's Code of Conduct can be investigated and decisions made on such allegations.

Such arrangements must provide for the authority to appoint at least one Independent Person, whose views must be sought by the authority before it takes a decision on an allegation which it has decided shall be investigated, and whose views can be sought by the authority at any other stage, or by a member *or a member or co-opted member of a parish council* against whom an allegation as been made.

**[NOTE – The Group consider that appointment of more than one IP should be avoided. Whilst there is an uncomfortable potential conflict in the role of an IP to advise “both sides”, this should be capable of handling by ensuring local understandings between MO and IP that the IP would speak to the MO first if and when approached by a subject councillor. Ultimately, the IP's was a consultative role so if he/she had already expressed a view to the subject councillor, the problem wasn't insurmountable as the final decision still rested with the Council. There may, however, be some merit in appointing a “reserve” or “substitute” IP to act in cases where the IP to act in cases where the IP is unable to act due to absence, sickness, etc.]**

## 2 The Code of Conduct

The Council has adopted a Code of Conduct for members, which is attached as Appendix One to these arrangements and available for inspection on the authority's website and on request from Reception at the Civic Offices. [Yet to be drafted]

*[Each parish council is also required to adopt a Code of Conduct. If you wish to inspect a Parish Council's Code of Conduct, you should inspect any website operated by the parish council or request the parish clerk to allow you to inspect the parish council's Code of Conduct. Alternatively the Borough Council's website contains a copy of each parish council's adopted Code of Conduct (or a link to it).*

## 3 Making a complaint

If you wish to make a complaint, please write or email to –

“The Monitoring Officer  
Maidstone Borough Council

Maidstone House  
King Street  
Maidstone  
Kent  
ME15 6JQ”

Or –

[paulfisher@maidstone.gov.uk](mailto:paulfisher@maidstone.gov.uk)

The Monitoring Officer is a senior officer of the authority who has statutory responsibility for maintaining the register of members’ interests and who is responsible for administering the system in respect of complaints of member misconduct.

In order to ensure that we have all the information which we need to be able to process your complaint, please complete and send us the model complaint form, which can be downloaded from the authority’s website, next to the Code of Conduct, and is available on request from Reception at the Civic Offices.

Please do provide us with your name and a contact address or email address, so that we can acknowledge receipt of your complaint. The authority does not normally investigate anonymous complaints, unless there is a clear public interest in doing so.

The Monitoring Officer will normally acknowledge receipt of your complaint within 10 working days of receiving it, and will subsequently notify you of any decision taken upon it

**If the complaint appears to the Monitoring Officer not to be a substantive allegation of misconduct under the Code of Conduct, s/he will so inform the complainant but may ensure where appropriate that the matter is dealt with under a more relevant procedure eg: if it is a complaint about a service or an officer or a statement of policy disagreement.**

**Where the complaint does appear to be an allegation of misconduct under the code, the Monitoring Officer (as well as acknowledging the complaint) will normally notify the member against whom the allegation is made of receipt of the complaint together with a summary of the allegation. S/he will explain that s/he will consult the Council’s appointed Independent Person about the allegation before deciding on the appropriate way to proceed.**

**Where the Monitoring Officer is of the opinion that such notification to the subject member would be contrary to the public interest or could prejudice any person’s ability to investigate the allegation s/he will consult the Independent Person and may then decide that such notification shall not be given at that stage.**

#### **4 Will your complaint be investigated?**

The Monitoring Officer will review every complaint received and, after consultation with the Independent Person, take a decision as to whether it merits formal investigation. This decision will normally be taken within **20 working** days of receipt of full information in relation to your complaint. Where the Monitoring Officer has taken a decision, he/she will inform you of his/her decision and the reasons for that decision.

***{NOTE: – The Group’s view is that MOs need to grasp the opportunity to raise the profile of local resolution options and remove bureaucracy and inflexibility. It would be sensible to informally consult IP on all cases prior to making delegated decisions at this stage, even though not legally required, in order to protect MO from allegations and also to keep the IP fully engaged. In addition, it is considered that***

***MOs should continue to be able to refer sensitive or borderline cases to a member 'Assessment Panel' at their sole discretion.***

Where he/she requires additional information in order to come to a decision, he/she may come back to you for such information, and may request information from the member against whom your complaint is directed. *Where your complaint relates to a Parish Councillor, the Monitoring Officer may also inform the Parish Clerks and seek information from them.*

In appropriate cases, the Monitoring Officer may seek to resolve the complaint informally, without the need for a formal investigation. Such informal resolution may involve the member accepting that his/her conduct was unacceptable and offering an apology, or other remedial action. Where the member makes a reasonable offer of local resolution, the Monitoring Officer will take account of this in deciding whether the complaint merits formal investigation.

## **5 How is the investigation conducted?**

The Council has adopted a procedure for the investigation of misconduct complaints, which is attached as Appendix Two to these arrangements.

***{NOTE: – The Group consider that the investigation procedure adopted must be flexible and allow the MO to adopt a process proportionate to the nature and seriousness of the case. This may involve little more than an exchange of letters or written representations in some cases. The existing adopted investigation procedures do not allow such flexibility. Not yet finalised.***

If the Monitoring Officer decides that a complaint merits formal investigation, he/she will appoint an Investigating Officer, who may be another senior officer of the authority, an officer of another authority or an external investigator but who will usually be the Council's Deputy Monitoring Officer. The Investigating Officer will decide whether he/she needs to meet or speak to you to understand the nature of your complaint and so that you can explain your understanding of events and suggest what documents the Investigating Officer needs to see, and who the Investigating Officer needs to interview.

The Investigating Officer would normally write to the member against whom you have complained and provide him/her with a copy of your complaint, and ask the member to provide his/her explanation of events, and to identify what documents he needs to see and who he needs to interview. In exceptional cases, where it is appropriate to keep your identity confidential or disclosure of details of the complaint to the member might prejudice the investigation, the Monitoring Officer can delete your name and address from the papers given to the member, or delay notifying the member until the investigation has progressed sufficiently.

At the end of his/her investigation, the Investigating Officer will produce a draft report and will send copies of that draft report, in confidence, to you and to the member concerned, to give you both an opportunity to identify any matter in that draft report which you disagree with or which you consider requires more consideration.

Having received and taken account of any comments which you may make on the draft report, the Investigating Officer will send his/her final report to the Monitoring Officer.

## **6 What happens if the Investigating Officer concludes that there is no evidence of a failure to comply with the Code of Conduct?**

The Monitoring Officer will review the Investigating Officer's report and, if (having consulted the Independent Person) he is satisfied that the Investigating Officer's report is sufficient, the Monitoring Officer will write to you and to the member concerned *and to the Parish Council, where your complaint relates to a Parish Councillor*, notifying you that he is satisfied that no further action is required, and give you both a copy of the Investigating Officer's final report. If the Monitoring Officer is not satisfied that the investigation has been conducted properly, he may ask the Investigating Officer to reconsider his/her report.

## **7 What happens if the Investigating Officer concludes that there is evidence of a failure to comply with the Code of Conduct?**

The Monitoring Officer will review the Investigating Officer's report and after consulting the Independent Person will then either send the matter for local hearing before the Hearings Panel or seek local resolution.

### **7.1 Local Resolution**

The Monitoring Officer may consider that the matter can reasonably be resolved without the need for a hearing. In such a case, he/she will consult with the Independent Person and seek to agree a fair resolution which also helps to ensure higher standards of conduct for the future. Such resolution may include the member accepting that his/her conduct was unacceptable and offering an apology, and/or other remedial action by the authority. If the member complies with the suggested resolution, the Monitoring Officer will report the matter to the Standards Committee *[and the Parish Council]* for information, but will take no further action.

### **7.2 Local Hearing**

If the Monitoring Officer having consulted the Independent Person considers that local resolution is not appropriate, then the Monitoring Officer will report the Investigating Officer's report to the Hearings Panel which will conduct a local hearing before deciding whether the member has failed to comply with the Code of Conduct and, if so, whether to take any action in respect of the member.

The Council has agreed a procedure for local hearings, which is attached as Appendix Three to these arrangements. [Still to be drafted].

**Note:** In the same way as the existing Investigation Procedure is too unwieldy and inflexible, so too is the existing Hearing Procedure.

Essentially, the Monitoring Officer will conduct a "pre-hearing process", requiring the member to give his/her response to the Investigating Officer's report, in order to identify what is likely to be agreed and what is likely to be in contention at the hearing, and the Chair of the Hearings Panel may issue directions as to the manner in which the hearing will be conducted. At the hearing, the Investigating Officer will present his/her report, call such witnesses as he/she considers necessary and make representations to substantiate his/her conclusion that the member has failed to comply with the Code of Conduct. For this purpose, the Investigating Officer may ask you as the complainant to attend and give evidence to the Hearings Panel. The member will then have an opportunity to give his/her evidence, to call witnesses and to make representations to the Hearings Panel as to why he/she considers that he/she did not fail to comply with the Code of Conduct.

If the Hearings Panel, with the benefit of any advice from the Independent Person, may conclude that the member did not fail to comply with the Code of Conduct, it will dismiss the complaint. If the Hearings Panel concludes that the member did fail to comply with the Code of Conduct, the Chair will inform the member of this finding and the Hearings Panel will then consider what action, if any, the Hearings Panel should take as a result of the member's failure to comply with the Code of Conduct. In doing this, the Hearings Panel will give the member an opportunity to make representations to the Panel and will consult the Independent Person, but will then decide what action, if any, to take in respect of the matter..

## 8 What action can the Hearings Panel take where a member has failed to comply with the Code of Conduct?

**NOTE:** It appears to be the case that even through districts must adopt "arrangements" to cover parish councils, any decision of a district on sanctions can only in effect be a recommendation to the parish council, who must then itself decide whether to accept the recommendation. In the absence of express powers, a district could not, for example, remove a parish councillor from a committee, remove facilities from a parish councillor etc. The district could only make a finding of breach/no breach and then recommend a course of action to the parish. This being so, the sub-group thought that there seemed little purpose in complicating the new regime by introducing parish co-optees onto panels. However, opinion within individual districts may well lead to a different views on this issue.

The Council has delegated to the Hearings Panel such of its powers to take action in respect of individual members as may be necessary to promote and maintain high standards of conduct. Accordingly the Hearings Panel may –

- 8.1 Publish its findings in respect of the member's conduct **eg: by providing a link to the relevant Decision Notice on a Standards/Complaints webpage.**
- 8.2 Report its findings to Council *or to the Parish Council* for information **eg: by way of inclusion in an annual report;**
- 8.3 Recommend to the member's Group Leader (or in the case of un-grouped members, recommend to Council or to Committees) that he/she be removed from any or all Committees or Sub-Committees of the Council;
- 8.4 Recommend to the Leader of the Council that the member be removed from the Cabinet, or removed from particular Portfolio responsibilities;
- 8.5 Instruct the Monitoring Officer to *or recommend that the Parish Council* arrange training for the member;
- 8.6 **Recommend to Council removal** *or recommend to the Parish Council that the member be removed* from all outside appointments to which he/she has been appointed or nominated by the authority *or by the Parish Council;*
- 8.7 Recommend to the Council that it withdraw *or recommend to the Parish Council that it withdraws* facilities provided to the member by the Council, such as a computer, website and/or email and Internet access **provided such action is directed to the efficient management of the authority's business and does not prevent the councillor fulfilling his/her duties as an elected member;** or

- 8.8 Recommend to the Council that it exclude *or recommend that the Parish Council exclude* the 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.

The Hearings Panel has no power to suspend or disqualify the member or to withdraw members' or special responsibility allowances.

**NOTE:** Although these draft arrangements suggest that the Hearings Panel would have delegated powers to make decisions on sanctions, it should be acknowledged that there are alternative options. For example, if one wanted to involve voting independent members and/or parish representatives on Panels, then the Panel could only be advisory, in relation to both its finding of breach/no breach and recommended sanction. The Panel's recommendations would then need to be reported elsewhere for final decision eg: full Council to agree that there has been a breach and to agree a censure (naming and shaming); the Group Leader to decide whether to remove from a committee etc.

## 9 What happens at the end of the hearing?

At the end of the hearing, the Chair will state the decision of the Hearings Panel as to whether the member failed to comply with the Code of Conduct and as to any actions which the Hearings Panel resolves to take. **Prior to reaching and announcing its decision in public, the Panel may retire to a separate room to deliberate in private. The MO may be called by the Panel if they require technical or legal guidance.**

As soon as reasonably practicable thereafter, the Monitoring Officer shall prepare a formal decision notice in consultation with the Chair of the Hearings Panel, and send a copy to you, to the member *[and to the Parish Council]*, and make that decision notice available for public inspection.

## 10 Who are the Hearings Panel?

The Hearings Panel is a Sub-Committee of the Council's Standards Committee **and will consist of 3 members drawn from the membership of the Standards Committee.** If the complaint is about a parish councillor the Sub-Committee will also include a non-voting representative of parish councils. The Independent Person is invited to attend all meetings of the Hearings Panel and his views are sought and taken into consideration before the Hearings Panel takes any decision on whether the member's conduct constitutes a failure to comply with the Code of conduct and as to any action to be taken following a finding of failure to comply with the Code of Conduct. **The Independent Person otherwise takes no part in the discussions or deliberations of the Panel.**

**[NOTE: The Group's view was that it was unnecessary to graft onto the imperfect statutory model any role for non-voting independent members. However it was recognised that some authorities may nonetheless seek to keep such people involved, albeit in a non-voting capacity.]**

## 11 Who is the Independent Person?

The Independent Person is a person who has applied for the post following advertisement of a vacancy for the post, and is appointed by a positive vote from a majority of all the members of Council.

A person cannot be "independent" if he/she –

- 11.1 Is, or has been within the past 5 years, a member, co-opted member or officer of the authority;
- 11.2 *Is or has been within the past 5 years, a member, co-opted member or officer of a parish council within the authority's area, or*
- 11.3 Is a relative, or close friend, of a person within paragraph 11.1 or 11.2 above. For this purpose, "relative" means –
- 11.3.1 Spouse or civil partner;
  - 11.3.2 Living with the other person as husband and wife or as if they were civil partners;
  - 11.3.3 Grandparent of the other person;
  - 11.3.4 A lineal descendent of a grandparent of the other person;
  - 11.3.5 A parent, sibling or child of a person within paragraphs 11.3.1 or 11.3.2;
  - 11.3.6 A spouse or civil partner of a person within paragraphs 11.3.3, 11.3.4 or 11.3.5; or
  - 11.3.7 Living with a person within paragraphs 11.3.3, 11.3.4 or 11.3.5 as husband and wife or as if they were civil partners.

## 12 Revision of these arrangements

The Council may by resolution agree to amend these arrangements, and the Chair of the Hearings Panel may depart from these arrangements where he/she considers that it is expedient to do so in order to secure the effective and fair consideration of any matter.

## 13 Appeals

There is no right of appeal for you as complainant or for the member against a decision of the Monitoring Officer or of the Hearings Panel

If you feel that the authority has failed to deal with your complaint properly, you may make a complaint to the Local Government Ombudsman.

### General Notes

1. **The Group discussed in some detail the various theoretical options for minimising the resource impact of parish council complaints/dysfunction (eg: delegation, charging etc) but concluded that in reality the best option was to adopt the same "arrangements" for parish complaints but just ensure the flexibility and proportionality built into the new process was fully deployed in appropriate trivial or tit for tat parish complaints.**
2. **The 2008 Regulations enabled statutory Assessment Panels to operate outside the Access to Information regime. This would no longer be possible for assessment decisions (by Panels or under delegated powers). Assessment Panel reports, when used, may still be capable of exemption**

**under Legal Privilege or Personal Information exemptions but otherwise maintaining confidentiality in the face of data protection or Fof requests appears to be fraught with uncertainty. Maybe our “arrangements” should expressly flag up for complainants and members that everything may be disclosable?**

- 3. When draft Code(s) of Conduct emerge from the LGA, it may be worth this Kent Secretaries sub-group meeting once more to develop a collective view on a possible Kent-wide approach, if time permits.**
- 4. It would also be helpful if, through Kent Secretaries, a common approach could be agreed to appointment of Independent Persons eg: a common Job Description, policy on payments, appointment process etc. – Any volunteers?**