

PROCEDURE ON RECEIPT OF A COMPLAINT

1. Notification of Complaint to Subject Member

- 1.1 Subject to any representations from the Complainant on confidentiality (see paragraph 5 below), the Monitoring Officer will notify the Subject Member [and, if applicable, the Parish Clerk] of the complaint.
- 1.2 The Monitoring Officer may invite the Subject Member [and, if applicable, the Parish Clerk] to submit initial views on the complaint, which will be taken into account by the Monitoring Officer when they decide how to deal with the complaint (see paragraph 4 below).

2. Preliminary Tests

- 2.1 The complaint will be assessed by the Monitoring Officer against the legal jurisdiction test in paragraph 2.2 and, if applicable, the local assessment criteria test in paragraph 2.4 below. The Monitoring Officer may assess the complaint in consultation with the Independent Person and the Chair/ Vice-Chair of the Joint Standards Committee.

2.2 Legal jurisdiction criteria test:

- (a) Did the alleged conduct occur before the adoption of the Code of Conduct? If the answer to this is 'Yes' the test is failed.
- (b) Was the person complained of a member of the Borough or Parish Council at the time of the alleged conduct? If the answer to this is 'No' the test is failed.
- (c) Was the person complained of acting in an official capacity at the time of the alleged conduct? If the answer to this is 'No' the test is failed.
- (d) Did the alleged conduct occur when the person complained of was acting as a member of another authority? If the answer to this is 'Yes' the test is failed.
- (e) If the facts could be established as a matter of evidence, could the alleged conduct be capable of supporting a finding of a breach of the Code of Conduct? If the answer to this is 'No' the test is failed.
- (f) Is the complaint about dissatisfaction with the Borough or Parish Council's decisions, policies, and priorities, etc? If the answer to this is 'Yes' the test is failed.

2.3 Local assessment criteria test:

If the complaint satisfies the legal jurisdiction test, the Monitoring Officer will then apply the following local assessment criteria test:

- (a) The complaint is substantially the same as a complaint which has previously been made.

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- (b) The complaint is anonymous, unless the Monitoring Officer is of the view, on the basis of corroborating evidence that it is in the public interest to accept the complaint. The Monitoring Officer may consult the Independent Person and the Chair/ Vice-Chair of the Joint Standards Committee.
- (c) No or insufficient information/evidence to substantiate the complaint has been submitted by the Complainant.
- (d) The complaint is malicious or relatively minor, and, in the view of the Monitoring Officer, the public interest would not be served by taking further action.
- (e) The Complainant is unreasonably persistent, malicious and/or vexatious.
- (f) The alleged misconduct happened more than 3 months prior to the submission of the complaint.
- (g) Dealing with the complaint would have a disproportionate effect on both public money and/or officers' and Members' time.
- (h) The circumstances have changed so much that there would be little benefit arising from an investigation or other action.
- (i) The complaint has been the subject of an investigation or other action and there is nothing more to be gained by further action being taken.
- (j) 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.
- (k) The complaint is about a deceased person.
- (l) The complaint is about a person who is no longer a Borough or Parish Councillor or Co-opted Member.

2.4 If the complaint fails one or more of the jurisdiction tests, no further action will be taken by the Monitoring Officer and the complaint will be rejected. The Complainant will be notified accordingly with reasons, normally within 60 working days of receipt of the complaint by the Monitoring Officer. There is no right of appeal against the Monitoring Officer's decision.

3. Asking for Additional Information

3.1 The Monitoring Officer may ask the Complainant and the Subject Member [and, if applicable, the Parish Clerk] for additional information before deciding how to deal with the complaint.

4. What Process to Apply - Informal Resolution or Investigation and/or No Action?

4.1 The Monitoring Officer may at any stage seek to resolve the complaint informally in accordance with paragraph 6 below. Where the Subject Member or the Monitoring Officer or the Borough or Parish Council make a reasonable offer of informal resolution, but the Complainant is not willing to accept this offer, the Monitoring Officer will take account of this in deciding whether the complaint merits formal investigation.

4.2 The Monitoring Officer may refer the complaint for investigation when:

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- (a) It is serious enough, if proven, to justify the range of sanctions available to the Standards Committee (see paragraph 12 of Annex 3 to these Arrangements); or
 - (b) The Subject Member's behaviour is part of a continuing pattern of less serious misconduct that is unreasonably disrupting the business of the Borough or Parish Council and there is no other avenue left to deal with it short of investigation. In considering this, the Monitoring Officer may take into account the time that has passed since the alleged conduct occurred.
- 4.3 Where the complaint is referred for investigation, the Monitoring Officer will appoint an Investigating Officer who will conduct the investigation in accordance with the procedure at Annex 2 to these Arrangements.
- 4.4 If the complaint identifies potential criminal conduct or potential breach of other regulations by the Subject Member or any other person, the Complainant may be advised by the Monitoring Officer to report the complaint to the police or other prosecuting or regulatory authority. Alternatively, the Monitoring Officer will consider the complaint against the legal jurisdiction criteria test and if the complaint passes that test the Monitoring Officer may pass the complaint to the police. Where a complainant has been advised to refer a matter to the police or the Monitoring Officer has referred the matter to the police the complaints process under these Arrangements will be suspended, pending a decision/action by the police or other prosecuting or regulatory authority. Where the police or other prosecuting or regulatory authority decide to take no action on the complaint, the Monitoring Officer will lift the suspension and will apply the local assessment criteria test in paragraph 2.4 above.
- 4.5 The Monitoring Officer may decide to take no action or to defer further action on the complaint whilst one or more of the following apply:
- (a) On-going criminal proceedings or police investigation into the Subject Member's conduct.
 - (b) Investigation cannot be proceeded with, without investigating similar alleged conduct or needing to come to conclusions of fact about events which are also the subject of some other investigation or court proceedings.
 - (c) The investigation might prejudice another investigation or court proceedings.
 - (d) Genuine long term (3 months or more) unavailability of a key party.
 - (e) Serious illness of a key party.
- 4.6 Normally within 90 working days of receipt of the complaint, the Monitoring Officer will notify the Complainant, Subject Member [and, if applicable, the Parish Clerk] of their decision and reasons for applying one of the following processes in the format of the Decision Notice template (appended to this Annex 1):
- (a) Not to refer the complaint for investigation.
 - (b) Refer the complaint for investigation.
 - (c) Apply the informal resolution process either before or after an investigation.
 - (d) Refer the complaint to the relevant political group leader for action.
- 4.7 There is no right of appeal against the Monitoring Officer's decision.

5. Confidentiality

- 5.1 If the Complainant has asked for their identity to be withheld, this request will be considered by the Monitoring Officer when they initially assess the complaint (see paragraph 2 above). The Monitoring Officer may consult the Independent Person and the Chair/ Vice-Chair of the Joint Standards Committee.
- 5.2 As a matter of fairness and natural justice, the Subject Member will usually be told who the Complainant is and will also receive details of the complaint. However, in exceptional circumstances, it may be appropriate to keep the Complainant's identity confidential or not disclose details of the complaint to the Subject Member during the early stages of an investigation. The Monitoring Officer may withhold the Complainant's identity and/or details of the complaint if they are satisfied that there are reasonable grounds for believing that the Complainant or any other person (e.g., a witness):
- (a) Is either vulnerable or at risk of threat, harm, or reprisal.
 - (b) May suffer intimidation or be victimised or harassed.
 - (c) Works closely with the Subject Member and are afraid of the consequences, e.g., fear of losing their job.
 - (d) Suffers from a serious health condition and there are medical risks associated with their identity being disclosed (medical evidence will need to be provided to substantiate this).
 - (e) May receive less favourable treatment because of the seniority of the person they are complaining about in terms of any existing Borough or Parish Council service provision or any tender/contract they may have with or are about to submit to the Borough or Parish Council.

OR where early disclosure of the complaint:

- (a) May lead to evidence being compromised or destroyed; or
 - (b) May impede or prejudice the investigation; or
 - (c) Would not be in the public interest.
- 5.3 Relevant public interest factors favouring disclosure (not an exhaustive list) include:
- (a) To facilitate transparency and ethical governance accountability: recognising that decision-making may be improved by constructive contributions from others.
 - (b) To raise public awareness: disclosing the complaint or part of it may inform the community about matters of general concern.
 - (c) Justice to an individual: the balance of the public interest may favour disclosure of the complaint to the Subject Member when it may not be in the public interest to disclose it to the world at large.
 - (d) Bringing out in the open serious concerns about the behaviour/conduct of an individual.

- 5.4 If the Monitoring Officer decides to refuse the Complainant's request for confidentiality, they will offer the Complainant the option to withdraw their complaint. The Complainant will be notified of the Monitoring Officer's decision, with reasons by the Monitoring Officer. There is no right of appeal against the Monitoring Officer's decision to refuse the Complainant's request for confidentiality.

6. Informal Resolution

- 6.1 The Monitoring Officer may seek to resolve a complaint informally at any stage in the process, whether without the need for an investigation, or before or after an investigation has been commenced or concluded. In so doing, the Monitoring Officer will consult with the Complainant and the Subject Member to seek to agree what they consider to be a fair resolution, which will help to ensure higher standards of conduct for the future.

- 6.2 Informal resolution may be the simplest and most cost effective way of resolving the complaint and may be appropriate where:

- (a) The Subject Member appears to have a poor understanding of the Code of Conduct and/or related Borough or Parish Council procedures; or
- (b) There appears to be a breakdown in the relationship between the Complainant and the Subject Member; or
- (c) The conduct complained of appears to be a symptom of wider underlying conflicts which, if unresolved, are likely to lead to further misconduct or allegations of misconduct; or
- (d) The conduct complained of appears common to a number of members of the Borough or Parish Council, demonstrating a lack of awareness, experience or recognition of the particular provisions of the Code of Conduct and/or other Borough or Parish Council procedures, etc; or
- (e) The conduct complained of appears to the Monitoring Officer not to require a formal sanction; or
- (f) The complaint appears to reveal a lack of guidance, protocols and procedures within the Borough or Parish Council; or
- (g) The Complainant and the Subject Member are amenable to engaging in an informal resolution; or
- (h) The complaint consists of allegations and retaliatory allegations between councillors; or
- (i) The complaint consists of allegations about how formal meetings are conducted; or
- (j) The conduct complained of may be due to misleading, unclear, or misunderstood advice from officers.

- 6.3 Informal resolution may consist of one or more of the following actions, which do not have to be limited to the Subject Member, but may extend to other councillors including the whole Borough or Parish Council where it may be useful to address systemic behaviour:

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- (a) Training.
 - (b) Conciliation/mediation.
 - (c) Mentoring.
 - (d) Apology.
 - (e) Instituting changes to the Borough or Parish Council's procedures.
 - (f) Conflict management.
 - (g) Development of the Borough or Parish Council's protocols.
 - (h) Other remedial action by the Borough or Parish Council.
 - (i) Other steps (other than investigation) if it appears appropriate to the Monitoring Officer.
- 6.4 If the Subject Member is agreeable to and complies with the informal resolution process, the Monitoring Officer may report the matter to the Joint Standards Committee [and, if applicable, the Parish Council] for information, but will take no further action against the Subject Member.
- 6.5 Where the Subject Member will not participate in the informal resolution process or if, having agreed to one or more actions under the informal resolution process, the Subject Member refuses or fails to carry out any agreed action, the Monitoring Officer may report the matter to the Joint Standards Committee.

Complaint Form

Your Details

1. Please provide us with your name and contact details.

Title:	
First name:	
Last name:	
Address:	
Daytime telephone:	
Evening telephone:	
Mobile telephone:	
Email address:	

2. Please tell us which complainant type best describes you:

- Member of the public
- An elected or co-opted member of an authority
- An appointed Independent Person for the purposes of the Localism Act 2011
- Member of Parliament
- Local authority Monitoring Officer
- Other council officer or authority employee
- Other (please give details) _____

3. Please provide us with the name of the councillor(s) you believe has breached the Code of Conduct and the name of their authority:

Title	First name	Last name	Council or authority name

4. Please explain in this section what the councillor has done that you believe breaches the Code of Conduct. If you are complaining about more than one councillor, you should clearly explain what each individual person has done that you believe breaches the Code of Conduct.

It is important that you provide all the information you wish to have taken into account by the Monitoring Officer when he decides whether to take any action on your complaint. For example:

- You should be specific, wherever possible, about exactly what you are alleging the councillor said or did. For instance, instead of writing that the councillor has conducted himself in a manner which could reasonably be regarded as bringing his office or the Authority into disrepute you, you should state what it was they said or did.
- You should provide the dates of the alleged incidents wherever possible. If you cannot provide exact dates, it is important to give a general timeframe.
- You should confirm whether there are any witnesses to the alleged conduct and provide their names and contact details if possible.
- You should provide any relevant background information.

Please provide us with the details of your complaint. Continue on a separate sheet if there is not enough space on this form.

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5. **Only complete this next section if you are requesting that your identity is kept confidential. Please see the notes in the accompanying leaflet "How to make a complaint".**

There is a presumption that a copy of this form will be provided to the subject member of your complaint. If you wish to request that information relating to your identity is kept confidential and withheld from the subject please complete the box below.

Please provide us with details of why you believe we should withhold your name and/or the details of your complaint:

Signed: _____

Date: _____

Return Address: The Monitoring Officer
Tonbridge & Malling Borough Council
Gibson Building, Gibson Drive
West Malling, ME19 4LZ

Complaints Form – Monitoring Information

In order to ensure we target our services in the most effective way for our community, we would appreciate if it you would give answers to the following questions. Please note that the information on this page **will not** be provided to the subject member of the complaint.

Q1. Ethnic Group

- White:**
British
 Irish
 Any other white background

- Black or Black British:**
Caribbean
 African
 Any other black background

- Asian or Asian British:**
Indian
 Pakistani
 Bangladeshi
 Any other Asian background

Q2. Sex

- Male
 Female

Q3. Partnership Status

- Single
 Married/Civil Partner
 Separated
 Divorced
 Widow/Widower

Q4. Age Group

- Under 16
 16-19
 20-24
 25-59
 60-64

65 and above

Q5. Do you have a disability?

- Yes
 No

Q6. What is the nature of your disability?

- Difficulty getting around
 Mental health problems
 Learning difficulty
 Difficulty seeing
 Hearing difficulty
 Other

Q7. To help us monitor issues for different sections of our community, we would appreciate it if you would tell us which faith group, if any, you belong to. If lack of faith is an issue in itself we would also like to know.

EXAMPLE TEMPLATE - DECISION NOTICE (of the Monitoring Officer): e.g., REFERRAL FOR INVESTIGATION

Parties should take care when passing on information that is in the notice or about the notice. For example, some details such as names and addresses may be confidential or private in nature or may be personal information.

Complaint No:

Complaint

On [insert date], the Monitoring Officer considered a complaint from [insert name of complainant] concerning the alleged conduct of [insert name of councillor], a member of [insert authority name]. A general summary of the complaint is set out below.

Complaint summary

[Summarise complaint in numbered paragraphs]

Consultation with Independent Person

[Summarise the Independent Person's views in numbered paragraphs]

Decision

[Having consulted and taken into account the views of the Independent Person], the Monitoring Officer decided to refer the complaint for investigation.

Potential breaches of the Code of Conduct identified

At this stage, the Monitoring Officer is not required or able to decide if the Code of Conduct has been breached. They are only considering if there is enough information which shows a potential breach of the Code of Conduct that warrants referral for investigation.

The Monitoring Officer considers that the alleged conduct, if proven, may amount to a breach of the following paragraphs of the Code of Conduct. The Monitoring Officer has appointed [insert name] as the Investigating Officer.

Please note that it will be for the Investigating Officer to determine which paragraphs are relevant, during the course of the investigation.

[detail relevant Code of Conduct paragraphs]

Notification of decision

This decision notice is sent to the:

- Complainant.
- Member against whom the complaint was made.
- [Clerk to the relevant Parish or Town Council].
- Kent County Council's Monitoring Officer (*applicable only where the Subject Member is serving at both Borough and County level*).

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What happens now

The complaint will now be investigated under the Borough Council's Arrangements for Dealing with Code of Conduct Complaints under the Localism Act 2011.

Appeal

There is no right of appeal against the Monitoring Officer's decision.

Additional Help

If you need additional support in relation to this decision notice or future contact with the Borough Council, please let us know as soon as possible. If you have difficulty reading this notice, we can make reasonable adjustments to assist you, in line with the requirements of the Equality Act 2010. We can also help if English is not your first language. Please refer to the attached Community Interpreting Service leaflet or contact our Customer Services on 01732 844522 or emailcustomer.services@tmbc.gov.uk.

Signed:

Date

Print name:

Monitoring Officer of Tonbridge & Malling Borough Council

Gibson Building, Gibson Drive
West Malling, Kent ME19 4LZ