

TONBRIDGE & MALLING BOROUGH COUNCIL

JOINT STANDARDS COMMITTEE

12 JULY 2023

Report of the Monitoring Officer

Part 1 - Public

Matters for recommendation to Council

1 REVIEW OF ARRANGEMENTS FOR DEALING WITH CODE OF CONDUCT COMPLAINTS

Summary

This report invites Members to consider revisions to the existing arrangements for dealing with Code of Conduct complaints

1.1 Introduction

1.1.1 On 27 April 2022 Full Council agreed changes to the Borough Council's adopted Code of Conduct in light of revisions to the Model Code of Conduct produced by the Local Government Association.

1.1.2 Members of the Committee may be aware that the Borough Council's adopted Code of Conduct (which has also been adopted by many Parish Councils within Tonbridge And Malling) was produced by Kent Secretaries (a Kent-wide group of Monitoring Officers at all Districts plus Medway Council and Kent County Council) in 2012 in response to changes to the standards legislative framework under the Localism Act 2011. The Code (known as the 'Kent Code') has since been adopted by the vast majority of Borough Councils in Kent, together with Kent County Council.

1.1.3 Since the revision of the Kent Code last year, the associated arrangements (which set out the process for handling complaints against Borough/ Parish/ Town Councillors under the Code) have been subject to detailed review by Kent Secretaries, with a view to reflecting any changes to the Code and generally to ensure they remain up to date.

1.1.4 This report outlines the suggested changes to the Council's adopted arrangements and asks Members to recommend these to full Council.

1.2 Changes to the existing arrangements

1.2.1 The principal changes to the arrangements are as follows:-

Arrangements		
Provision	Proposed amendment	Commentary
Para 4.1 - making a complaint	New – allows for complaints to be submitted either via the form or via the Council's website using the on-line complaint form provided there.	This reflects the increased use of digital forms for interacting with the Council.
Para 14.1 - discontinuation of action	New – in the event that the Subject Member has died, is seriously ill or has ceased to be an elected member or co-opted member of the Borough or Parish/ Town Council the Monitoring Officer may decide to end the complaints process.	There is currently no provision within the current arrangements to end code of conduct complaints due to death, serious illness or resignation of the subject member.
Annex 1 – Procedure on receipt of a complaint		
Para 2.2 – legal jurisdiction test	Amendment – moving the 'official capacity' criteria from the 'local assessment criteria test' to 'legal jurisdiction criteria test'.	The question as to whether a member was acting in an official capacity is one for the legal jurisdiction test rather than the local assessment test
Para 4 – informal resolution	Amendment - broadens the scope of the provisions, allowing the Subject Member and Borough/ Parish Council to make reasonable offers of informal resolution	
Annex 2 – Procedure for investigating the complaint		
Para 2 – evidence of new breaches	New – deals with discovery of new	

	breaches by investigating officer during the course of an investigation	
Para 3 - referring cases back to the Monitoring Officer	New – details how the Monitoring Officer can end an investigation on the receipt of additional evidence	This allows for the early closure of an investigation, when new evidence is received that would render the investigation fruitless to continue.
Para 4 – deferring an investigation	New – allows for investigations to be deferred where there are either ongoing criminal proceedings/ police investigation or where the code of conduct investigation may prejudice another investigation or court proceedings.	
Para 6 - consideration of final report	Amendment – allows Monitoring Officer to resolve complaint informally.	The existing arrangements allow the Monitoring Officer to either take no action or refer the complaint to the Hearing Panel. This amendment will allow the Monitoring Officer to resolve complaints more quickly/ reduce costs for minor breaches of the code.
Annex 3 – Hearing Panel procedure		
Para 1.1 – pre-hearing procedure	New - in order to allow the hearing to proceed fairly and efficiently, the Monitoring Officer may in appropriate cases use a pre-hearing	The introduction of a pre-hearing procedure will allow the Monitoring Officer to narrow the issues to be determined by the Hearing Panel and allow the hearing to

	<p>procedure to identify:</p> <p>-Which facts in the investigation report are agreed and which are in dispute.</p> <p>-Whether there is fresh evidence not mentioned in the investigation report which will be put before the hearing.</p>	<p>proceed as efficiently as possible.</p>
<p>Para 5.1 – introductory statement</p>	<p>New – the Monitoring Officer, legal advisor, or Chair of the Panel may make an introductory statement outlining the nature of the complaint and the purpose of the hearing, and the procedure to be followed.</p>	<p>As with the amendment to para 1.1, this new provision is intended to allow the hearing to proceed as efficiently as possible.</p>
<p>Paras 10.4 and 10.5 – Mitigating and aggravating factors</p>	<p>New – mitigating and aggravating factors</p>	<p>For transparency and to assist the Hearing Panel, the arrangements will now list relevant mitigating and aggravating factors.</p>
<p>Para 12.2 - role of Parish Councils</p>	<p>New - clarifies the role and powers of Parish Councils in relation to sanctions recommended by the Hearing Panel</p>	<p>To assist Parish/ Town Councils in considering sanctions following a finding by the Hearing Panel</p>
<p>Para 12.3 – Failure to comply with a sanction</p>	<p>New – clarifies that a failure to comply with a sanction may of itself be a breach of the Code.</p>	

1.2.2 The other changes to the arrangements are all relatively minor e.g., some changes to the time periods for assessment of complaints.

1.2.3 The Borough Council is not obliged to accept the changes proposed by Kent Secretaries.

1.3 Financial and Value for Money Considerations

1.3.1 None arising out of this report.

1.4 Legal implications

1.4.1 The Localism Act requires that the Borough Council adopt “arrangements” under which allegations can be investigated and decisions on allegations can be made. Such complaints can only be dealt with in accordance with such “arrangements”. A failure to comply with a Borough/ Parish/ Town code of conduct is not to be dealt with otherwise than in accordance with the Borough Council’s adopted arrangements.

1.5 Risk Assessment

1.5.1 It is important that a robust system exists for the promotion and maintenance of high standards of conduct. The absence of such a framework will lower public confidence in the democratic process.

1.6 Equality Impact Assessment

1.6.1 The issues detailed in this report have a remote or low relevant to the substance of the Equality Act. There is no perceived impact on end users.

1.7 Recommendations

1.7.1 It is **RECOMMENDED** that the Council adopts the revised Arrangements at Annex 1.

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Background Papers: none